now in use, or any other form of motive power to be substitued therefor, or used in connection therewith; and the party of the first part hereby authorizes and consents to the maintenance of the said structure and the operation of the said railroad through the said street and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the party of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property hereinabove described.

And, the said party of the first part covenants with the parties of the last part as follows:

First: That the said covenantor is seized in fee simple absolute of the said easements and has good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said easements.

Third: That the said easements are free from

encumbrances, except four certain mortgages given to secure payment of the aggregate sum of $2,850,000.00, and Judgments J. B.

Fourth: That the said covenantor will execute or procure any further necessary assurance of the title to the said easements.

Fifth: That the said covenantor will forever warrant the title to the said easements.

In Witness Whereof, the party of the first part has caused these presents to be signed by its President and caused its corporate seal to be hereto 4964
affixed this the day and year first above written.

The Forty-second Street Manhattanville & St. Nicholas Av. Railway Co. by John Beaver, President.

Sealed and delivered in presence of Henry A. Robinson (LS).

State of New York, County of New York, ss.:

On the 28th day of October, in the year one thousand nine hundred and one (1901), before me personally came John Beaver to me known, who, 4965
being by me duly sworn, did depose and say that he resided in Borough of Manhattan, New York City; that he is the President of The 42nd Street, Manhattanville and St, Nicholas Avenue Railway Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Thos. J. Reilly, Notary Public, New York County.

4966 *Claimants' Exhibits.*

Claimants' Exhibit "J-3"—Conveyance and Release, Manhattan Storage & Warehouse Co. to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, The Manhattan Storage and Warehouse Company, a corporation organized and existing under the laws of the State of New York, acquired title in fee simple to certain premises hereinafter described by deed dated March 13, 1882, and ever since said date has been and now is seized and possessed thereof; and

4967 Whereas, the said premises are bounded and described as follows, viz:

Beginning at the corner formed by the intersection of the southerly side of East 42nd Street with the westerly side of Lexington Avenue, and running thence southerly along the westerly side of Lexington Avenue one hundred ninety-seven feet and six inches to the northerly side of East 41st Street; thence westerly along the northerly side of East 41st Street one hundred twenty-five feet; thence northerly parallel with Lexington Avenue
4968 one hundred ninety-seven feet and six inches to the southerly side of East 42nd Street, and thence easterly along the southerly side of East 42nd Street one hundred twenty-five feet to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 122, 124 & 126 East 42nd Street, in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises

4969

above described, the parties hereinafter named of the last part, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said party of the first part, or which may hereafter arise to the said party of the first part or its grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises.

4970

Now, therefore, this instrument, made this first day of June, 1900, between The Manhattan Storage and Warehouse Company, a corporation organized and existing under the laws of the State of New York, party of the first part and the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

4971

Witnesseth, That for and in consideration of the sum of Six thousand two hundred fifty ($6250.00) dollars, the receipt whereof is hereby acknowledged, the party of the first part hereby releases the parties of the last part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the party of the first part, and including all claims, damages, and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant

4972 to the same, produced by the construction, maintenance or operation of the elevated railroad.

And the party of the first part, hereby grants and conveys to the parties of the last part, their successors and assigns, all the right, title and interest of the said party of the first part in said East 42nd Street and the land forming the bed thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same
4973 is now constructed, maintained and operated, except as hereinafter stated; and the party of the first part hereby authorizes and consents to the maintenance of the said structure and the operation of the said railroad through the said street and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the party of the first part,
4974 caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing bur-

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den upon the abutting property herein above described.

And the said party of the first part covenants with the parties of the last part as follows:

First: That the said covenantor is seized in fee simple absolute of the said property and has good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances except a mortgage given to secure payment of the sum of $400,000.00.

4976

Fourth: That the said covenantor will execute or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantor will forever warrant the title to the said property.

In Witness Whereof the party of the first part has caused these presents to be signed by its Vice-President and caused its corporate seal to be hereto affixed this the day and year first above written.

4977

The Manhattan Storage & Warehouse Co., Thomas L. Wells, Vice-Prest.

Sealed and delivered in Presence of William White Whittaker. (Seal) Stamps attached.

Acknowledged on June 7, 1900 by Thomas L. Wells.

4978

Claimants' Exhibit "J-4"—Conveyance and Release, Harriette W. Goelet, et al. to Interborough Rapid Transit Co., N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas Robert Goelet, being already seized of an interest in the premises hereinafter described, acquired the whole title thereto by partition deed dated April 20, 1898, and remained so seized and possessed thereof until April 27, 1899, when he died, leaving his will dated November 8, 1898,

4979 proved before the Court of Probate at Newport, Rhode Island, on June 26, 1899, an exemplified copy whereof and proofs of said probate being duly recorded in the office of the Surrogate of New York Co. on October 18, 1899, by which will testator bequeathed to his wife Harriette W. Goelet an annuity of $200,000, charging the same on all his real estate, and devised his residuary estate, including said premises, to his executors and trustees or to such of them as shall qualify and undertake the execution of said will, the survivors or survivor of them and their successors, in trust for the benefit of his son Robert W. Goelet until he

4980 shall have attained the age of 25 years, when said real estate should be conveyed to said son in fee, but upon his death before attaining such age, having children or issue of deceased children him surviving, or upon his death before such time leaving no children, then the said son's share to vest as in said will provided, subject in any event to said annuity; and

Whereas, said testator appointed his wife Harriette W. Goelet, his son Robert W. Goelet on his attaining the age of 21 years, and George G. DeWitt, executors and trustees, and letters testamen-

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tary were duly issued by said Court of Probate on June 26th, 1899, and ancillary letters testamentary were issued by the Surrogate of New York Co. on November 1, 1899, to the said Harriette W. Goelet, and George G. DeWitt, and the said Robert W. Goelet qualified as executor under letters testamentary granted to him on or about November 24, 1902, by said Court of Probate; which said several letters are unrevoked and in full force; and

Whereas, In an application made to the New York Supreme Court, New York Co., by George G. DeWitt, one of the executors of and trustees under said will, a final order was entered on September 28, 1904, which, among other things, authorized said executors and trustees to make the conveyance hereinafter set forth; and

4982

Whereas, ever since April 27th, 1899, the title to said premises has been and now is vested in the executors of and trustees under said will, as aforesaid; and

Whereas, the said premises are bounded and described as follows, viz:

4983

Beginning at the corner formed by the intersection of the southerly line of 42nd Street with the easterly line of Lexington Avenue; running thence easterly along the southerly line of 42nd Street one hundred and ninety-five feet; thence southerly and parallel with Lexington Avenue ninety-eight feet nine inches to the center line of the block; thence westerly along said center line one hundred and ninety-five feet to the easterly line of Lexington Avenue; thence northerly along Lexington Avenue ninety-eight feet nine inches to the place of beginning, be the said several dimen-

4984 sions more or less said premises being now known as No. 128, 130, 132, 134, 136, 138, 140, 142, 144 and 146 East 42nd Street in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises
4985 above described, the parties hereinafter named of the last part, and their lessee, the Interborough Rapid Transit Company, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said parties of the first part, or which may hereafter arise to the said par-
4986 ties of the first part or their grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises.

Now, Therefore, this instrument made this 7th day of October, 1904, between Harriette W. Goelet, of Newport, Rhode Island, individually and as executrix and trustee, Robert W. Goelet of the same place, as trustee, and George G. DeWitt of New York City, as Executor and trustee, all of and under the last will and testament of Robert Goelet, deceased, parties of the first part, the Interborough Rapid Transit Company, party of the second part, and the New York Elevated Railroad

Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part, 4987

Witnesseth, That for and in consideration of the sum of Seventeen thousand five hundred ($17,500.00) dollars, the receipt whereof is hereby acknowledged, the parties of the first part hereby release the Interborough Rapid Transit Company, party of the second part, and the parties of the last part and each of them, from all claims, damages and cause or causes of action, which now exist in favor of the parties of the first part or 4988
any of them and including all claims, damages and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

And, the parties of the first part, hereby grant and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part, and 4989
which said executors and trustees have power to convey, in said East 42nd Street and the land forming the bed thereof, and the easements therein, appurtenant to said premises which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated, and the parties of the first part hereby authorize and consent to the maintenance of the said structure and the operation of the said railroad through the

4990 said street and past the premises hereinbefore described, by the parties of the second and last parts, their successors, assigns and lessees forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the second and last parts
4991 and their successors, assigns and lessees may at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property herein above described.

4992 And the said parties of the first part, as executors and trustees as aforesaid, covenant with the parties of the last part as follows:

First. That the said covenantors have not done nor suffered anything whereby said premises have been encumbered in any way whatever, and have good right to convey the same.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in presence of

Harriette W. Goelet Individually and as executrix and trustee, etc. (Seal).

George G. De Witt as Trustee, etc. (Seal).

Robert Walton Goelet as Executor and trustee &c (Seal).

Acknowledged on October 14th, 1904, by George G. De Witt.

Acknowledged on November 11, 1904, by Robert Walton Goelet.

Acknowledged on November 14th, 1904, by Harriette W. Goelet.

4994

Claimants' Exhibit "J-5"—Conveyance, Dorothy L. Laimbeer, etc. to Manhattan Railway Co. & N. Y. El. R. R. Co.

This Indenture made the seventh day of February, in the year one thousand eight hundred and ninety one, between Dorothy Louisa Laimbeer, executrix of the last will and testament of William Laimbeer, deceased, party of the first part, and the Manhattan Railway Company and The New York Elevated Railroad Company, parties of the second part,

4995

Witnesseth: That, for and in consideration of the sum of Five thousand dollars ($5,000.), the receipt whereof is hereby acknowledged, the party of the first part hereby grants and releases unto the parties of the second part, their, and each of their, successors and assigns forever, all the property of the estate of the said William Laimbeer, deceased, late owner of the land whereof the following is a description:

Beginning at a point in the southerly side of East Forty-second street distant one hundred feet

4996 west from the westerly side of third avenue and running thence southwardly and parallel with Third Avenue ninety-eight feet and nine inches, thence westwardly and parallel with East Forty-second street forty-one feet and eight inches, thence northwardly and parallel with Third avenue ninety-eight feet and nine inches to East Forty-second street, and thence eastwardly along East Forty-second street forty-one feet and eight inches to the point or place of beginning, be the said several dimensions more or less, said premises being now
4997 known as Nos. 156 and 158 East Forty-second street in the city of New York, taken by the parties of the second part, and each and either of them, and by any predecessor of either, by the construction, maintenance and operation of an elevated railroad through East Forty-second Street adjacent to said premises; the intent of these presents being to vest in the parties of the second part, their, and each of their, successors and assigns, the right to maintain the said elevated railroad as *heretofore constructed*, and now maintained, through East Forty-second street adjacent to said
4998 premises, the said elevated structure consisting of iron columns imbedded in the soil, surmounted by a superstructure supporting tracks, and to operate the same in the manner in which the same is now operated;

To Have and to Hold the above granted property unto the said parties of the second part, their, and each of their, successors and assigns forever.

And the said party of the first part covenants with the parties of the second part as follows:

First: That the party of the first part has good right to convey the same.

Second: That the parties of the second part shall quietly enjoy the said property.

Third: That the said property is free from incumbrances.

Fourth: That the party of the first part will execute or procure any further necessary assurance of the title to the said property.

Fifth: That the party of the first part will forever warrant the title to the said property.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written. 5000

Dorothy L. Laimbeer, Executrix (Seal)

Sealed and delivered in presence of George B. Juckett

City and County of New York, ss:

On this 12th day of February, one thousand eight hundred and ninety-one, before me personally appeared Dorothy L. Laimbeer, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and 5001 acknowledged to me that she executed the same for the purposes therein mentioned.

Gorge B. Juckett, Comr. of Deeds, N. Y. City & County.

Claimants' Exhibit "J-6"—Conveyance and Release, Alethea H. Weeks, et al., to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, Jacob Weeks being seized in fee simple absolute of certain premises hereinafter described died on or about the 9th day of September, 1881, leaving a last will and testament which

5002 was duly admitted to probate in New York County on September 27th, 1881, by the terms of which said premises were devised to his executors therein named upon trust to collect the rents &c., and pay over the net income thereof to Henry Astor Weeks with remainder to the heirs of the said Henry Astor Weeks and to his wife Alethea H. Weeks, share and share alike, and

Whereas Letters Testamentary on said Will were duly granted to Catharine Weeks, Jacob Weeks Cornwell and George Washington Weeks, Executors on the 27th day of September, 1881, and

5003

Whereas, said Catharine Weeks the above named executrix and trustee, died on or about the 7th day of April, 1882, and said Henry Astor Weeks the above named *cestui que trust* died intestate on or about the 20th day of April, 1891, leaving him surviving his widow Alethea H. Weeks, Mary B. Weeks, a daughter and Bartow S. Weeks, a son, all of full age; and

Whereas, at the date hereof the title to said premises is vested in fee simple absolute in said Alethea H. Weeks, Mary B. Weeks and Bartow S. Weeks as tenants in common, and the said premises are bounded and described as follows, viz.:

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Beginning at the corner formed by the intersection of the southerly side of 42nd Street with the westerly side of Third Avenue and running thence westerly along the southerly side of 42nd Street one hundred feet, thence southerly parallel with Third Avenue or nearly so ninety-eight feet and nine inches, thence easterly parallel with 42nd Street or nearly so one hundred feet to the westerly side of Third Avenue and thence northerly along the westerly side of Third Avenue

ninety-eight feet and nine inches to the point or place of beginning, be the said several dimensions more or less; said premises being now known as Nos. 650, 652, 654, 656 and 658 3rd Ave. and No. 160 E. 42nd St., in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the streets adjacent thereto, as open public streets and an interest or estate in the land forming the beds of the said streets; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and 5006

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said parties of the first and second parts, or which may hereafter arise to the said parties of the first part or their grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises as the same is now constructed, maintained and operated. 5007

Now, therefore, this instrument, made this 2nd day of August 1892, between Alethea H. Weeks, Mary B. Weeks, Bartow S. Weeks and Antoinette M., his wife, parties of the first part and Jacob Weeks Cornwell and George Washington Weeks as the surviving executors of and trustees under the last will and testament of Jacob Weeks, deceased, parties of the second part and The New York Elevated Railroad Company and the Man-

5008 hattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part, Witnesseth:

That for and in consideration of the sum of Five Thousand seven hundred dollars, the receipt whereof is hereby acknowledged, the parties of the first and second parts hereby release the parties of the last part and each of them, from all claims, damages and cause or causes of action, which now exist in favor of the parties of the first and second parts or any of them, and including
5009 all claims, damages, and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

[redacted] the parties of the first part, hereby grant and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part in said
5010 3rd Ave. & 42nd Street and the land forming the beds thereof, and the easements therein, appurtenant to said prmises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said streets as the same is now constructed, maintained and operated; and the parties of the first part hereby authorize and consent to the maintenance of the said structure and the operation of the said railroad through the said streets and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any

damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated.

And, the said Alethea H. Weeks, Mary B. Weeks and Bartow S. Weeks covenant with the parties of the last part as follows:

First: That the said covenantors are seized in fee of the said property, and have good right to convey the same. 5012

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances.

Fourth: That the said covenantors will execute or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantors will forever warrant the title to the said property.

In Witness Whereof the parties of the first and second parts have hereunto set their hands and seals the day and year first above written. 5013

Sealed and delivered in presence of.

Alethea H. Weeks (Seal)
Mary B. Weeks (Seal)
Bartow S. Weeks (Seal)
Antoinette M. Weeks (Seal)
George Weeks, Ex. & Trustee (Seal)
Jacob W. Cornwell, Exec. & Trs. (Seal)

Acknowledged on August 3, 1892 by Alethea H. Weeks, Mary B. Weeks, Bartow S. Weeks and Antoinette M. Weeks; on September 28, 1892 by Jacob W. Cornwell and George W. Weeks.

5014 *Claimants' Exhibits.*

Claimants' Exhibit "J-7"—Conveyance and Release, Thos. B. Winthrop & Wife to Manhattan Railway Co.

Whereas, Thomas Buchanan Winthrop having formerly held an undivided interest in certain premises, hereinafter described, acquired the whole title thereto in severalty by two several deeds dated respectively July 22, 1874 and January 22, 1883, and ever since he so acquired title has been and now is seized and possessed thereof; and

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Whereas, the said premises are bounded and described as follows, viz.:

Beginning at the corner formed by the intersection of the Northerly side of East 42nd Street with the Easterly side of Depew Place, and running thence Northerly along the Easterly side of Depew Place one hundred feet and five inches to the center of the block; thence Easterly along the center line of the block seventy-five feet; thence Southerly parallel with Depew Place, or nearly so, one hundred feet and five inches to the

5016 Northerly side of 42nd Street, and thence Westerly along the Northerly side of 42nd Street seventy-five feet to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 119, 121 and 123 East 42nd Street, in the City of New York; and

Whereas, there are and at all times have been attached to the said Winthrop's premises and as part thereof and appurtenant thereto, certain easements of light, air and access in and over said street in front of and adjoining said premises,

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and the said Winthrop acquired with his aforesaid premises the right to have said Forty-second Street in front thereof kept open as a public street and highway; and

Whereas, in or about the year 1877 the New York Elevated Railroad Company commenced the construction of an elevated railroad in said Forty-second Street in front of said Winthrop's premises and completed the same in the month of August, 1878, when it commenced the operation of a steam elevated railroad thereon, and said New York Elevated Railroad Company subsequently and prior to the year 1890 leased the said railroad to the Manhattan Railway Company by which said railroad has ever since been and is now operated; and

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Whereas, the said railway as so constructed and maintained is a permanent structure, and the operation of trains thereon, as the same has been and is now operated, has from the year 1878 to the present time constituted and will hereafter constitute a use inconsistent with and in excess of the ordinary uses for which said Forty-second Street was set apart and reserved in law, and by such inconsistent and excessive street use a portion of the easements of access and of air and light forming part of the land of the said Winthrop has been taken and kept and is now in the possession of the Manhattan Railway Company, and the maintenance of said structure has obstructed and will hereafter continuously obstruct the access and lessen the light in said Winthrop's premises, and the running of trains thereon, with the noise and the escape of steam, cinders, dust, noxious gases and odors from the

5019

5020 locomotives have obstructed, and will hereafter obstruct, lessen and interfere with the air and light which would otherwise enter said premises; and

Whereas, heretofore the said party of the first part instituted his certain action against the said Manhattan Railway Company seeking to perpetually enjoin the said Manhattan Railway Company from maintaining, continuing or operating said railway structure in front of his said premises as aforesaid; and

5021 Whereas, such proceedings were had in said action that on the 23rd day of October, 1896, final judgment was therein entered, adjudging, among other things, that the value of the said Winthrop's property and easements above described as taken, withheld, appropriated and used by said Manhattan Railway Company was Thirty-one Thousand Dollars, and that the value of said Winthrop's premises was lessened Thirty-one Thousand Dollars by the aforesaid acts of the Manhattan Railway Company and that such damages were continuous; and

5022 Whereas, said judgment further provided that the said Manhattan Railway Company be and they were perpetually enjoined and restrained from maintaining or in any way using the elevated railroad structure in front of said Winthrop's property hereinabove described, except to remove the same, and from operating trains of cars thereon on and after ninety days from the entry of said judgment; and which judgment further decreed that in case the Manhattan Railway Company should, within ninety days after the service of a copy of such judgment, deliver to the said Winthrop a written offer to pay him said sum of

Thirty-one thousand dollars, then, upon said Winthrop's tender to the said Manhattan Railway Company of a duly executed conveyance or grant of so much of the property of said Winthrop in Forty-second Street in front of Nos. 119, 121 and 123 East 42nd Street, and the easements appurtenant thereto, as had been taken and appropriated by the Manhattan Railway Company for the purposes of its said structure or railroad, with a release of the lien of all mortgages upon said property and all encumbrances thereon, except a certain lease of said premises dated June 2nd, 1875, and said Manhattan Railway Company pay said sum of Thirty-one thousand dollars to said Winthrop therefor, with interest from the date of the trial on the delivery thereof, then the said injunction should not be operative so far as it affects the maintenance and operation of said structure and railroad at said locality, until ten days after the said Winthrop may thereafter deliver or tender for delivery said conveyance or grant, and if such payment were duly made, the said injunction should thereafter remain wholly inoperative.

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Now, therefore, this instrument made this first day of February, one thousand nine hundred, between Thomas Buchanan Winthrop, of the City of New York, and Sarah Helen, his wife, parties of the first part, and the Manhattan Railway Company, a corporation duly organized under the Laws of the State of New York, party of the second part, Witnesseth:

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That for and in consideration of the sum of Thirty-one Thousand Dollars, with interest thereon from October 15, 1896, the receipt whereof is hereby acknowledged, the parties of the first part here-

by grant and convey to the party of the second part, its successors and assigns, so much of the property of the said Winthrop in Forty-second Street, in front of Nos. 119, 121 and 123 East Forty-second Street, and the easements appurtenant thereto, as on said 23rd day of October, 1896, had been taken and appropriated by the Manhattan Railway Company for the purpose of its said structure or railroad.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day
5027 and year first above written.

Thomas Buchanan Winthrop (Seal)
Sarah Helen Winthrop (Seal).

Sealed and delivered in
presence of

Winthrop McKim

$31 revenue stamps cancelled.

Acknowledged on February 6, 1900 by Thomas Buchanan Winthrop.

Acknowledged on February 6, 1900 by Sarah
5028 Helen Winthrop.

Certificate of City Clerk of City of New York attached.

Claimants' Exhibit "J-8"—Conveyance, J. Frederic Kernochan, etc. to Manhattan Railway Co.

Whereas, by a partition deed dated January 25, 1865, the title to certain premises hereinafter described, became vested in Henry R. Winthrop, as trustee of the share of Harriet R. Winthrop (now Harriet R. McKim) and her issue, etc., under the

Will of Almy T. Hicks, deceased, with power of sale in said trustee with the approval of the said Harriet R. McKim; and 5029

Whereas, by an order of the Supreme Court, New York County, dated January 15, 1897, J. Frederic Kernochan was duly appointed as substituted Trustee in place and stead of the said Henry R. Winthrop, and has been ever since his appointment and now is seized and possessed of the said premises as trustee as aforesaid; and

Whereas, the said premises are bounded and described as follows, viz.: 5030

Beginning at a point on the northerly side of East 42nd Street, one hundred fifty feet westerly from the corner formed by the intersection of the northerly side of East 42nd Street with the westerly side of Lexington Avenue, and running thence northerly and parallel with Lexington Avenue one hundred feet and five inches to the center of the block; thence westerly parallel with 42nd Street fifty feet; thence southerly parallel with Lexington Avenue one hundred feet and five inches to the northerly side of East 42nd Street, and thence easterly along the northerly side of East 42nd Street fifty feet to the point or place of beginning, be the said several dimensions more or less; said premises being now known as Nos. 125 and 127 East 42nd Street, in the City of New York; and 5031

Whereas, there are and at all times have been attached to the said trustee's premises and as part thereof and appurtenant thereto, certain easements of light, air and access in and over said street in front of and adjoining said premises, and the said trustee acquired with his aforesaid prem-

5032 ises the right to have said Forty-second Street in front thereof kept open as a public street and highway; and

Whereas, in or about the year 1877, the New York Elevated Railroad Company commenced the construction of an elevated railroad in said Forty-second Street in front of said trustee's premises and completed the same in the month of August, 1878, when it commenced the operation of a steam elevated railroad thereon, and said New York Elevated Railroad Company subsequently and prior
5033 to the year 1890 leased the said railroad to the Manhattan Railway Company, by which said railroad has ever since been and is now operated; and

Whereas, the said Railway as so constructed and maintained, is a permanent structure, and the operation of trains thereon, as the same has been and is now operated, has from the year 1878 to the present time constituted and will hereafter constitute a use inconsistent with and in excess of the ordinary uses for which said Forty-second Street was set apart and reserved in law, and by such
5034 inconsistent and excessive street use a portion of the easements of access and of air and light forming part of the land of the said trustee has been taken and kept and is now in the possession of the Manhattan Railway Company, and the maintenance of said structure has obstructed and will hereafter continuously obstruct the access and lessen the light in said trustee's premises, and the running of trains thereon, with the noise and the escape of steam, cinders, dust, noxious gases and odors from the locomotives have obstructed, and will hereafter obstruct, lessen and interfere with

the air and light which would otherwise enter said premises; and

Whereas, heretofore the said Henry R. Winthrop, as trustee under the Will of Almy T. Hicks, deceased, instituted his certain action against the said Manhattan Railway Company seeking to perpetually enjoin the said Manhattan Railway Company from maintaining, continuing or operating said railway structure in front of his said premises as aforesaid; and

Whereas, such proceedings were had in said action that on the 23d day of October, 1896, final judgment was therein entered, adjudging, among other things, that the value of the said trustee's property and easements above described as taken, withheld, appropriated and used by said Manhattan Railway Company was Twenty thousand, six hundred and sixty-six and two-thirds Dollars, and that the value of said trustee's premises was lessened Twenty thousand, six hundred and sixty-six and two-thirds Dollars by the aforesaid acts of the Manhattan Railway Company, and that such damages were continuous; and

Whereas, said judgment further provided that the said Manhattan Railway Company be and they were perpetually enjoined and restrained from maintaining or in any way using the elevated railroad structure in front of said trustee's property hereinabove described, except to remove the same, and from operating trains of cars thereon on and after ninety days from the entry of said judgment; and which judgment further decreed that in case the Manhattan Railway Company should, within ninety days after the service of a copy of such judgment, deliver to the said trustee a written offer to pay his said sum of Twenty thousand, six

5038 hundred and sixty-six and two-thirds Dollars, then upon said trustee's tender to the said Manhattan Railway Company of a duly executed conveyance or grant of so much of the property of said trustee in Forty-second Street in front of Numbers 125 and 127 East Forty-second Street, and the easements appurtenant thereto, as had been taken and appropriated by the Manhattan Railway Company for the purposes of its said structure or railroad, with the release of the lien of all mortgages upon said property and all encumbrances thereon, except a
5039 certain lease of said premises, dated June 2, 1875, and said Manhattan Railway Company pay said sum of Twenty thousand, six hundred and sixty-six and two-thirds Dollars to said trustee therefor, with interest from the date of the trial on the delivery thereof, then the said injunction should not be operative so far as it affects the maintenance and operation of said structure and railroad at said locality, until ten days after the said trustee may thereafter deliver or tender for delivery said conveyance or grant, and if such payment were duly made, the said injunction should thereafter remain wholly inoperative.

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Now, Therefore, this instrument made this first day of February One thousand, nine hundred, between J. Frederic Kernochan, of the City of New York, as substituted trustee in place and stead of Henry R. Winthrop under the Will of Almy T. Hicks, deceased, party of the first part, and the Manhattan Railway Company, a corporation duly organized under the laws of the State of New York, party of the second part, Witnesseth:

That for and in consideration of the sum of Twenty thousand, six hundred and sixty-six and

two-thirds Dollars, with interest thereon from October 15, 1896, the receipt whereof is hereby acknowledged, the party of the first part hereby grants and conveys to the party of the second part, its successors and assigns, so much of the property of the said trustee in Forty-second Street in front of Numbers 125 and 127 East Forty-second Street, and the easements appurtenant thereto as on said 23d day of October, 1896, had been taken and appropriated by the Manhattan Railway Company for the purpose of its said structure or railroad. 5042

In Witness Whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

J. Frederic Kernochan, Trustee &c. (L. S.)

Sealed and delivered in the presence of:

Winthrop McKim

State of New York, County of New York, ss.:

On this 6th day of February, one thousand, nine hundred, before me personally appeared J. Frederic Kernochan, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the purposes therein mentioned. 5043

Winthrop McKim, Commissioner of Deeds, City of New York.

Certificate of City Clerk, Feb. 9, 1900, certifying that Winthrop McKim at time of taking above acknowledgment, was a Commissioner of Deeds &c.

5044

Claimants' Exhibit "J-9"—Conveyance, Harriet R. McKim to Manhattan Railway Co.

Whereas, Harriet R. McKim, having previously held an undivided interest in certain premises hereinafter described, acquired the whole title thereto by deed dated January 22, 1883, and ever since said date has been and now is seized and possessed thereof; and

Whereas, the said premises are bounded and described as follows, viz:

5045

Beginning at a point on the northerly side of East 42nd Street, one hundred and twenty-five feet westerly from the corner formed by the intersection of the northerly side of East 42nd Street with the westerly side of Lexington Avenue, and running thence northerly parallel with Lexington Avenue one hundred feet and five inches to the center of the block; thence westerly parallel with East 42nd Street twenty-five feet; thence southerly parallel with Lexington Avenue one hundred feet and five inches to the northerly side of 42nd Street; thence easterly along the northerly side of 42nd Street twenty-five feet to the point or place of beginning, be the said several dimensions more or less; said premises being now known as No. 129 East 42nd Street, in the City of New York; and

5046

Whereas, there are and at all times have been atached to the said Harriet R. McKim's premises and as part thereof and appurtenant thereto, certain easements of light, air and access in and over said street in front of and adjoining said premises and the said Harriet R. McKim acquired with her aforesaid premises the right to have said Forty-second Street in front thereof kept open as a public street and highway; and

5047

Whereas, in or about the year 1877 the New York Elevated Railroad Company commenced the construction of an elevated railroad in said Forty-second Street in front of said Harriet R. McKim's premises and completed the same in the month of August, 1878, when it commenced the operation of a steam elevated railroad thereon, and said New York Elevated Railroad Company subsequently and prior to the year 1890 leased the said railroad to the Manhattan Railway Company, by which said railroad has ever since been and is now operated; and

5048

Whereas, the said Railway as so constructed and maintained, is a permanent structure, and the operation of trains thereon, as the same has been and is now operated, has from the year 1878 to the present time constituted and will hereafter constitute a use inconsistent with and in excess of the ordinary uses for which said Forty-second Street was set apart and reserved in law, and by such inconsistent and excessive street use a portion of the easements of access and of air and light forming part of the land of the said Harriet R. McKim has been taken and kept and is now in the posession

5049

of the Manhattan Railway Company, and the maintenance of said structure has obstructed and will hereafter continuously obstruct the access and lessen the light in said Harriet R. McKim's premises, and the running of trains thereon, with the noise and the escape of steam, cinders, dust, noxious gases and odors from the locomotives have obstructed, and will hereafter obstruct, lessen and interfere with the air and light which would otherwise enter said premises; and

Whereas, heretofore the said party of the first

5050 part instituted her certain action against the said Manhattan Railway Company seeking to perpetually enjoin the said Manhattan Railway Company from maintaining, continuing or operating said railway structure in front of her said premises as aforesaid; and

Whereas, such proceedings were had in said action that on the 23d day of October, 1896, final judgment was therein entered, adjudging, among other things, that the value of the said Harriet R. McKim's property and easements above described
5051 as taken, withheld, appropriated and used by said Manhattan Railway Company was Ten thousand, three hundred and thirty-three and one-third Dollars, and that the value of said Harriet R. McKim's premises was lessened Ten thousand, three hundred and thirty-three and one-third Dollars by the aforesaid acts of the Manhattan Railway Company and that such damages were continuous; and

Whereas, said judgment further provided that the said Manhattan Railway Company be and they were perpetually enjoined and restrained from maintaining or in any way using the elevated rail-
5052 road structure in front of said Harriet R. McKim's property hereinabove described, except to remove the same, and from operating trains of cars thereon on and after ninety days from the entry of said judgment; and which judgment further decreed that in case the Manhattan Railway Company should, within ninety days after the service of a copy of such judgment, deliver to the said Harriet R. McKim a written offer to pay her said sum of Ten thousand, three hundred and thirty-three and one-third Dollars, then upon said Harriet R. McKim's tender to the said Manhattan Railway Com-

pany of a duly executed conveyance or grant of so much of the property of said Harriet R. McKim in Forty-second Street in front of Number 129 East Forty-second Street, and the easements appurtenant thereto, as had been taken and appropriated by the Manhattan Railway Company for the purposes of its said structure or railroad, with the release of the lien of all mortgages upon said property and all encumbrances thereon, except a certain lease of said premises, dated June 2, 1875, and said Manhattan Railway Company pay said sum of Ten thousand, three hundred and thirty-three 5054
and one-third Dollars to said Harriet R. McKim therefor, with interest from the date of the trial on the delivery thereof, then the said injunction should not be operative so far as it affects the maintenance and operation of said structure and railroad at said locality, until ten days after the said Harriet R. McKim may thereafter deliver or tender for delivery said conveyance or grant, and if such payment were duly made, the said injunction should thereafter remain wholly inoperative,

Now Therefore, this instrument made this fifth day of February, One thousand nine hundred, be- 5055
tween Harriet R. McKim, of the City of New York, party of the first part, and the Manhattan Railway Company, a corporation duly organized under the laws of the State of New York, party of the second part, Witnesseth:

That for and in consideration of the sum of Ten thousand three hundred and thirty-three and one-third Dollars, with interest thereon from October 15, 1896, the receipt whereof is hereby acknowledged, the party of the first part hereby grants and conveys to the party of the second part, its suc-

cessors and assigns, so much of the property of the said Harriet R. McKim in Forty-second Street in front of Number 129 East Forty-second Street, and the easements appurtenant thereto as on said 23d day of October, 1896, had been taken and appropriated by the Manhattan Railway Company for the purpose of its said structure or railroad.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

5057 Harriet R. McKim (LS)

Sealed and delivered
in the presence of

Winthrop McKim.

(Stamps)

State of New York, County of New York, ss:

On this 6th day of February, one thousand nine hundred, before me personally appeared Harriet R. McKim, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged
5058 to me that she executed the same for the purposes therein mentioned.

Winthrop McKim, Commissioner of Deeds, City of New York.

(Certificate of proof of acknowledgment of annexed instrument attached.)

Claimants' Exhibit "J-10"—Conveyance and Release, Jas. W. Pinchot to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, under date of June 2, 1875, Charlotte B. Hicks, T. Buchanan Winthrop and Sallie H.

5059

Winthrop, his wife, and Henry R. Winthrop, as Trustee of T. Buchanan Winthrop and Harriet R. McKim, duly made and executed a lease of certain premises hereinafter described, to Theodore Weston and James W. Pinchot for a term of fifty-seven years from May 1st, 1875, and the said lease contained a covenant that the lessees, at any time before the end of the term or within twenty days thereafter, may remove the buildings thereon erected, unless the lessors should elect to purchase the same; and

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Whereas, under date of May 26, 1879, the said Theodore Weston duly assigned all his interest in the said leasehold to the said James W. Pinchot, who, ever since he so acquired title has been and now is in possession as lessee of the said premises and as owner of the buildings thereon erected; and

Whereas, the said premises are bounded and described as follows, viz.:—Beginning at the corner formed by the intersection of the northerly side of East 42nd Street with the easterly side of Depew Place, and running thence northerly along the easterly side of Depew Place two hundred feet and ten inches to the southerly side of 43rd Street;

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thence easterly along the southerly side of 43rd Street one hundred and fifty feet; thence southerly parallel with Depew Place two hundred feet and ten inches to the northerly side of East 42nd Street, and thence westerly along the northerly side of East 42nd Street one hundred and fifty feet to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 119 to 129 East 42nd Street, in the City of New York; and

Whereas, appurtenant to said premises there are

5062 claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend,
5063 for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said party of the first part or which may hereafter arise to the said party of the first part or his grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises during the term of said lease and of any renewals thereof.

Now Therefore, this instrument made this 6th day of April, 1901 between James W. Pinchot, of the City of New York, party of the first part and
5064 the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

Witnesseth, That for and in consideration of the sum of Thirty-six thousand ($36,000.00) dollars, the receipt whereof is hereby acknowledged, the party of the first part hereby releases the parties of the last part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the party of the first part and including all claims, damages, and cause or causes of action for depreciation in the value of the said

premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad. 5065

And, the party of the first part, hereby grants and conveys to the parties of the last part, their successors and assigns, all the right, title and interest of the said party of the first part in said East 42nd Street, and the land forming the bed thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated; and the party of the first part hereby authorizes and consents to the maintenance of the said structure and the operation of the said railroad through the said street and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter during the term of said lease and of any renewal thereof be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the party of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; 5066 5067

5068 provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property herein above described.

And, the said party of the first part covenants with the parties of the last part as follows:

First: That the said covenantor is in possession, as lessee, of and as owner of the buildings
5069 erected upon the demised lands and is entitled to the possession of the said property hereby released and has good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property hereby released.

Third: That the said property hereby released is free from encumbrances.

Fourth: That the said covenantor will execute or procure any further necessary assurance of the title to the said property hereby released.

Fifth: That the said covenantor will during the
5070 term of said lease and of any renewals thereof warrant the title to the said property hereby released.

In Witness Whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

James W. Pinchot (LS)

Sealed and delivered in presence of

Leon Malraison, Notary Public, New York County, N. Y.

5071

State of New York, County of New York, ss.:

On this ninth day of April, one thousand nine hundred and one (1901) before me personally appeared James W. Pinchot, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the purposes therein mentioned.

Leon Malraison, Notary Public, New York County, N. Y. (Seal)

5072

Claimants' Exhibit "J-11"—Conveyance and Release, Cooper Union for Advancement of Science and Art, et al. to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, Edward Cooper and Abram S. Hewitt, as Trustees, acquired title in fee simple to the premises hereinafter described by deed dated December 1st, 1880, and remained so seized and possessed of the same until on or about the 1st day of March, 1902, when by instrument bearing that date they conveyed an undivided one half interest in said premises to Edward Cooper, and a like interest to Sarah A. Hewitt, in fee; and

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Whereas, by instrument dated March 3rd, 1902, the said Edward Cooper individually and as Trustee, Abram S. Hewitt, as Trustee, and Sarah A. Hewitt, conveyed said premises to Cooper Union for the advancement of Science and Art, a domestic corporation, which since said date has been and now is seized in fee of said premises; and

Whereas, the said premises are bounded and described as follows, viz:

5074

Beginning at the corner formed by the intersection of the Northerly side of Forty second Street with the Easterly side of Lexington Avenue, and running thence Northerly along the Easterly side of Lexington Avenue Forty feet; thence Easterly parallel or nearly so with Forty second Street Eighty seven feet and two inches; thence Northerly parallel or nearly so with Lexington Avenue Sixty feet and five inches; thence again Easterly to a point; thence Southwesterly to a point on the Northerly side of Forty second Street One hundred

5075

sixty seven feet and two inches Easterly from the said Northeasterly corner of Forty second Street and Lexington Avenue, and thence Westerly along said Northerly side of Forty second Street One hundred and sixty seven feet and two inches to the point or place of beginning, be the said several dimensions more or less said premises being now known as Nos. 135 to 143 East 42nd Street in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto as an open

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public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises above described the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which

may have arisen to the said parties of the first and second parts, or which may hereafter arise to the said party of the first part or its grantees, by reason of the construction, maintenance and operation of the said railroad, adjacent to the said premises. 5077

Now, therefore, this instrument, made this seventh day of February 1903, between Cooper Union for the Advancement of Science and Art, a corporation organized and existing under the Laws of the State of New York, party of the first part, and Edward Cooper individually and as Trustee and Sarah A. Hewitt parties of the second part and the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part, Witnesseth, That for and in consideration of the sum of Twenty five thousand and fifty ($25,050) dollars, the receipt whereof is hereby acknowledged, the parties of the first and second parts hereby release the parties of the last part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the parties of the first and second parts or any of them and including all claims, damages, and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad. 5078 5079

And, the party of the first part, hereby grants and conveys to the parties of the last part, their successors and assigns, all the right, title and in-

5080 terest of the said party of the first part in said East 42nd Street and the land forming the bed thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated; and the party of the first part hereby authorizes and consents to the maintenance of the said structure and the operation of the said railroad through the said street and past the prem-
5081 ises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the party of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may, upon the condition next hereinafter stated, at any time hereafter use, in
5082 the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property herein above described.

And the said party of the first part covenants with the parties of the last part as follows:

5083

First: That the said covenantor is seized in fee simple of the said property, and has good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances.

Fourth: That the said covenantor will execute or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantor will forever warrant the title to the said property. 5084

In Witness Whereof, the party of the first part has caused these presents to be subscribed by its President and caused its corporate seal to be hereto affixed, and the parties of the second part have hereunto set their hands and seals the day and year first above written.

Edward Cooper (L.S.) individually and as Trustee.

Cooper Union for the Advance of Science and Art (L.S.) by Edward Cooper, President. 5085

Attest L. C. L. Jordon Asst. Secy. (Corporate Seal)

Sarah A. Hewitt (L.S.)

Sealed and delivered in presence of

Philip K. Walcott as to Edward Cooper individually and as trustee and as President.

Edward E. Haskell as to L. C. L. Jordon, F. M. Sanders as to Sarah A. Hewitt.

State of New York, County of New York, ss.:

On this seventh day of February, one thousand nine hundred and three (1903) before me per-

5086 sonally appeared Edward Cooper, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the purposes therein mentioned, both individually and as trustee as aforesaid.

Philip K. Walcott, Commissioner of Deeds, New York City.

State of New York, County of New York, ss.:

5087 On this seventh day of February, one thousand nine hundred and three (1903) before me personally appeared Sarah A. Hewitt, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same for the purposes therein mentioned.

Fred. M. Sanders, Notary Public No. 287, New York Co.

State of New York, County of New York, ss.:

5088 On this seventh day of February, in the year one thousand nine hundred and three (1903) before me personally came Edward Cooper to me known, who being by me duly sworn did depose and say that he resided in the City of New York; that he is the President of the Cooper Union for the Advancement of Science and Art, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the Board of Trustees of said corporation, and that he signed his name thereto by like authority.

Philip K. Walcott, Commissioner of Deeds, New York City.

5089

State of New York, County of New York, ss.:

On this seventh day of February, in the year one thousand nine hundred and three (1903) before me personally came L. C. L. Jordan, to me known, who being by me duly sworn did depose and say that he resided in the City of Mount Vernon, Westchester County, New York; that he is the assistant secretary of the Cooper Union for the Advancement of Science and Art, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; 5090
that it was so affixed by authority of the Board of Trustees of the said corporation, and that he signed his name thereto by like authority; and the said L. C. L. Jordan further said that he was acquainted with Edward Cooper, and knew him to be the president of said corporation; that the signature of the said Edward Cooper subscribed to said conveyance was in the genuine handwriting of the said Edward Cooper, and was thereto subscribed by the like authority of the said Board of Trustees and in the presence of him, the said L. C. L. Jordan.

Edward E. Haskell, Notary Public 49, New York 5091
County. (LS)

Claimants' Exhibit "J-12"—Conveyance and Release, Mary R. Goelet, et al., to Interborough Rapid Transit Co., N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas Robert Goelet and Ogden Goelet, being already respectively seized of an undivided interest in the premises hereinafter described, acquired the whole title thereto in fee simple, as tenants in common, by partition deed dated March 12, 1881

5092 *Claimants' Exhibits.*

and so remained the owners thereof until August 27, 1897, when the said Ogden Goelet died, leaving his will dated December 2, 1895, proved in New York Co. October 7, 1897, whereby he devised his residuary estate, including his interest in said premises, to his executors and trustees, or to such of them as qualify, and their survivors and survivor, or their successors, in trust for the benefit of his son Robert Goelet and his daughter Mary W. Goelet, as in said will provided; said testator authorizing and empowering his executors and
5093 trustees (among other things) to make or cause to be made a just and actual partition and division of said real estate or any part thereof held in common or jointly by testator with any other person or to join with such other tenants in common in making such partition, &c., and

Whereas, said testator appointed his wife Mary R. Goelet, his brother Robert Goelet, George G. DeWitt, and his son Robert Goelet on his attaining the age of twenty-one years, as executors of and trustees under said will; and letters testamentary were issued on October 9, 1897 to the said Mary R.
5094 Goelet and George G. DeWitt, and on September 28, 1901, to testator's said son Robert Goelet, (he having theretofore attained the age of 21 years) who respectively qualified as such executors and trustees; and

Whereas by partition deed dated April 20, 1898, the said Mary R. Goelet and George G. DeWitt, then the sole qualified and acting executors of and trustees under said will, acquired the whole title to said premises, subject to the trusts and powers and to and for the uses and purposes declared in said will; and

5095

Whereas, in an application to the N. Y. Supreme Court, N. Y. County, by George G. DeWitt, one of said executors and trustees &c. a final order was duly entered on July 26, 1904, authorizing (among other things) the executors of and trustees under said will to make the conveyance and release hereinafter following; and

Whereas, the said premises are bounded and described as follows, viz:—

Beginning at a point on the northerly side of 42nd St., distant one hundred sixty-seven feet and two inches easterly from the corner formed by the intersection of the northerly line of 42nd Street with the easterly line of Lexington Avenue, and running thence northerly eighty-two feet and eight and one-half inches; thence easterly and parallel or nearly so with 42nd Street thirty-three feet and one-fourth of an inch; thence southerly seven feet and one-fourth of an inch to a point distant seventy-eight feet and one and one-half inches from the northerly line of 42nd Street; thence southerly and parallel with Third Avenue seventy-eight feet and one and one-half of an inch to the northerly line of 42nd Street and thence westerly along 42nd Street fifty-two feet and ten inches to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 145 and 147 East 42nd Street, in the City of New York; and

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Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises

5098 above described, the parties hereinafter named of the last part, and their lessee, the Interborough Rapid Transit Company, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said parties of the first
5099 part, or which may hereafter arise to the said parties of the first part or their grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises

Now, Therefore, this instrument made this 6th day of October, 1904, between Mary R. Goelet and Robert Goelet, both of Newport, Rhode Island, and George G. DeWitt, of New York City, as Executors of and trustees under the last will and testament of Ogden Goelet, deceased, parties of the first part, the Interborough Rapid Transit Company, party of the second part, and the New York Elevated
5100 Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

Witnesseth, That for and in consideration of the sum of Four thousand five hundred ($4500.00) dollars, the receipt whereof is hereby acknowledged, the parties of the first part hereby release the Interborough Rapid Transit Company, party of the second part, and the parties of the last part and each of them, from all claims, damages and cause or causes of action, which now exist in favor of

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the parties of the first part or any of them and including all claims, damages and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

And the parties of the first part, hereby grant and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part and which they have power to convey, in said East 42nd Street, and the land forming the bed thereof, and the easements therein, appurtenant to said premises which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated, and the parties of the first part hereby authorize and consent to the maintenance of the said structure and the operation of the said railroad through the said street and past the premises hereinbefore described, by the parties of the second and last parts, their successors, assigns, and lessees forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the second and last parts and their successors, assigns, and lessees may at any time hereafter use, in the

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5104 operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property hereinabove described.

And the said parties of the first part, as execu-
5105 tors and trustees as aforesaid covenant with the parties of the last part as follows:

First: That the said covenantors have not done nor suffered anything whereby said premises have been encumbered in any way whatever and have good right to convey the same.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

Mary R. Goelet as Executrix and Trustee &c. (Seal)

5106 George G. DeWitt as Executor and Trustee &c. (Seal)

Robert Goelet as Executor and Trustee &c. (Seal)

Sealed and delivered in the presence of F. Firth, Jr.

As to Mary R. Goelet and Robert Goelet.

Mortimer Bishop as to Geo. G. DeWitt.

Acknowledged on October 14, 1904 by George DeWitt; on October 25, 1904 by Robert Goelet and on January 5, 1905 by Mary R. Goelet.

5107

Claimants' Exhibit "J-13"—Conveyance and Release, Jas. Hernon to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, James Hernon acquired title to certain premises, hereinafter described, by deed dated March 26th, 1884, and ever since said date has been and now is seized and possessed of the same, which said premises are now known as No. 149 East Forty-second Street, in the City of New York, and are bounded and described as follows: Beginning at a point in the northerly side of East Forty-second Street, about one hundred and seventy-five feet west from the westerly side of Third Avenue, and running thence northwardly, and parallel or nearly so with Third Avenue sixty-two feet and eight inches; thence northwestwardly twenty-eight feet eight and one-half inches; thence southwardly, and parallel or nearly so with Third Avenue, seventy-eight feet one and one-half inches to East Forty-second Street; and thence eastwardly, along East Forty-second Street, twenty-five feet to the point or place of beginning, be the said several dimensions more or less; appurtenant to which said premises there are claimed to be certain rights or easements to the enjoyment of the street in front of said premises, as an open public street, and an interest or estate in the land forming the bed of the said street; and

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Whereas, the New York Elevated Railroad Company, a corporation duly organized under the laws of the State of New York, heretofore, and in or about the year 1879, began the construction of an elevated railway through East 42nd Street, in front of the lands and premises above described, the construction of which said elevated railway was

5110 thereafter, and in 1880, completed, and trains of cars, drawn by steam locomotives, were from such time operated thereon, and have continued to be so operated until the present time; and

Whereas, in or about the month of May, 1879, and on or about the first day of August, 1884, the Manhattan Railway Company, a corporation duly organized under the laws of the State of New York, leased from the said New York Elevated Railroad Company said elevated railway, and thereafter maintained and operated the same with steam lo-

5111 comotives, with the exception of the months of June and July, 1884, at which times the New York Elevated Railroad Company operated the same, and the Manhattan Railway Company or its successors intend to operate and maintain the same forever; and

Whereas, under and pursuant to the provisions of Chapter 254 of the Laws of 1867, and of Chapter 503 of the Laws of 1879, the New York Elevated Railroad Company, on the 3d day of February, 1890, became merged in the Manhattan Railway

5112 Company, and the estate, property, rights, privileges and franchises of the said New York Elevated Railroad Company have vested in and are now held and enjoyed by said Manhattan Railway Company; and

Whereas, the parties to this agreement desire and intend, for the consideration hereinafter expressed, to settle, adjust and compromise all the claims and causes of action against said companies, or either of them, which may have arisen to the party of the first part, or which may hereafter arise to the said party of the first part or his grantees, by reason of the construction, mainte-

nance and operation of the said railway in front of the said premises; and as now constructed, maintained and operated; and

Whereas the party of the first part, for the consideration hereinafter expressed intends to release the parties of the last part from all causes of action, claims and liability for damages, injuries and annoyances which may heretofore have been inflicted, or which may hereafter be inflicted, upon the premises hereinbefore described, or the owner thereof, or the occupant thereof, by the erection, maintenance and operation of the said railway in the street upon which said premises abut, or by reason of the destruction of or the interference with the easements and rights appurtenant to said premises, occasioned by such construction, maintenance and operation of the said elevated railway, as now constructed, maintained and operated; and 5114

Whereas the party of the first part intends to grant and convey to the parties of the last part all such easement, interest, right or title in the said street, and the land forming the bed thereof, as is or may be necessary for the erection, maintenance and operation of the said elevated railway through the said street, and past the said premises, as the same is now constructed and operated, and intends to grant authority and permission to the parties of the last part, their successors and assigns, to maintain and operate forever said elevated railway, including the structure and trains as at present maintained and operated, and without payment of further compensation or damages. 5115

Now, Therefore, this agreement made this 8th day of May, 1890, between James Hernon, party of the first part, and The New York Elevated Rail-

5116 road Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part, Witnesseth:

That for and in consideration of the sum of twenty-one hundred and seventy-four and 58/100 dollars, paid by the parties of the last part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part hereby releases the parties of the last part and each of them, from all claims, damages and cause or
5117 causes of action, which now exist in favor of the party of the first part, and including all claims, damages and cause or causes of action for depreciation in the value of the said premises, and loss of rents or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railways.

And the party of the first part hereby grants and conveys to the parties of the last part, their
5118 successors and assigns, all such easement, interest, right or title in the said East 42nd Street, and the land forming the bed thereof, as are or may be necessary for the construction and maintenance of the elevated structure, and the operation of trains upon the elevated railways of the parties of the last part, as now constructed and operated; and the party of the first part hereby authorizes and consents to the maintenance of the said structure, and the operation of the said railway through said street, and past the premises hereinbefore described by the parties of the last part, their successors or assigns forever, without further com-

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pensation or further liability for any damages that may hereafter be sustained by the said premises, or by the owner or occupant thereof or by any person in privity of estate with the party of the first part, caused by said maintenance and operation of said railway, as now maintained and operated.

And the said party of the first part for his heirs, executors, administrators and assigns, does hereby covenant, promise and agree to and with the said parties of the last part, their successors and assigns, that the said parties of the last part, their 5120
successors and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above-granted interest or easement, and every part and parcel thereof, with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, his heirs or assigns.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

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James Hernon (Seal)

Acknowledged on May 9, 1890 by James Hernon.

Claimants' Exhibit "J-14"—Conveyance and Release, Alice M. O'Brien, etc. to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, William O'Brien, being seized in fee simple of the premises hereinafter described, subject only to the dower right of Margaret O'Brien, which ceased upon her death on December 16,

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1886, died on the 17th day of October, 1885, intestate, leaving him surviving his children, Philip J. O'Brien, otherwise known as Joseph W. O'Brien, Mary M. O'Brien, Alice M. O'Brien and John J. O'Brien, his only heirs-at-law; and

Whereas, by deed dated January 20, 1896, the said Joseph W. O'Brien conveyed his interest in said premises to Bridget D. Fitzpatrick, in trust, with remainder upon his death to the persons who would be entitled to take the same by descent; and

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Whereas, the said Joseph W. O'Brien died on September 19th, 1898, intestate, leaving him surviving John J. O'Brien and Alice M. O'Brien, his only heirs at law, and letters of administration upon his estate were duly issued to Alice M. O'Brien, which letters remain in full force; and

Whereas, said Mary M. O'Brien died on August 11, 1896, intestate, leaving her said brothers and sister her only heirs-at-law, and letters of administration on her estate were duly issued unto Bridget D. Fitzpatrick, which letters remain in full force; and

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Whereas, said John J. O'Brien and Alice M. O'Brien are now the owners in fee of said premises, which are bounded and described as follows, viz.:

Beginning at a point on the northerly side of 42nd Street one hundred fifty feet westerly from the corner formed by the intersection of the northerly side of 42nd Street with the westerly side of Third Avenue, and running thence northerly parallel with Third Avenue seventy-five feet and five inches; thence westerly parallel with 42nd Street twenty-five feet; thence southerly parallel

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with Third Avenue seventy five feet and five inches to the northerly side of 42nd Street, and thence easterly along the northerly side of 42nd Street twenty-five feet to the point or place of beginning, be the said several dimensions more or less

said premises being now known as No. 153 East 42nd Street, in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

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Whereas, adjacent to the lands and premises above described the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said parties of the first and second parts or which may hereafter arise to the said parties of the first part or their grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises.

5127

Now, Therefore, this instrument made this 7th day of January, 1903, between Alice M. O'Brien and John J. O'Brien, unmarried, of New York City, parties of the first part, and the said Alice M. O'Brien, as Administratrix, &c. of Philip Joseph O'Brien (otherwise known as Joseph W. O'Brien), deceased, and Bridget D. Fitzpatrick, of the same

5128 place, as trustee for the said Philip Joseph O'Brien, parties of the second part and the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

Witnesseth, That for and in consideration of the sum of Three thousand three hundred and eighty one 07/100 ($3381.07) dollars, the receipt whereof is hereby acknowledged, the parties of the first and second parts, hereby release the parties of the last
5129 part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the parties of the first and second parts, or any of them and including all claims, damages, and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

And the parties of the first part hereby grant
5130 and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part in said East 42nd Street and the land forming the bed thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated; and the parties of the first part hereby authorize and consent to the maintenance of the said structure and the operation of

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the said railroad through the said street and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may at any time 5132
hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property herein above described.

And the said Alice M. O'Brien and John J. 5133
O'Brien covenant with the parties of the last part as follows:

First: That the said covenantors are seized in fee simple as tenants in common of the said property and have good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances.

Fourth: That the said covenantors will execute

5134 or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantors will forever warrant the title to the said property.

In Witness Whereof, the parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

Alice M. O'Brien Individually and as Administratrix, &c. (Seal)

John J. O'Brien, (Seal).

5135 Bridget D. Fitzpatrick, as Trustee for Philip J. O'Brien now deceased (Seal).

Sealed and delivered in presence of

Witness as to Alice M. O'Brien John J. O'Brien & Bridget D. Fitzpatrick—Stephen F. Nash.

Acknowledged on January 9th, 1903 by Alice M. O'Brien John J. O'Brien and Bridget D. Fitzpatrick.

Claimants' Exhibit "J-15"—Conveyance, Margaret J. Westcott to N. Y. El. R. R. Co. & Manhattan Railway Co.

5136

Whereas, Margaret J. Westcott, acquired title in fee simple to certain premises hereinafter described by deed dated March 4th, 1878, and ever since said date has been and now is seized and possessed thereof; and

Whereas, the said premises are bounded and described as follows, viz.:

Beginning at a point on the northerly side of East Forty-second Street one hundred feet westerly from the corner formed by the intersection of the northerly side of East Forty ond street

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with the westerly side of Third Avenue, and running thence northerly parallel with Third Avenue one hundred feet and five inches to the centre of the block, and thence westerly parallel with Forty-second Street seventy-five feet; thence southerly parallel with Third avenue twenty-five feet; thence easterly parallel with Forty-second street twenty-five feet; thence southerly parallel with Third avenue seventy-five feet and five inches to the northerly side of East Forty-second street, and thence easterly along the northerly side of East Forty-second Street fifty feet to the point or place of beginning, be the said several dimensions more or less, said premises being now known as No. 155 East Forty-second street in the City of New York, and

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Whereas, appurtenant to said premises there are certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

5139

Whereas, the said Margaret J. Westcott did begin an action in the Supreme Court of the State of New York against the Manhattan Railway Company and the New York Elevated Railroad Company as defendants, and

Whereas, judgment was made and entered in said action on the 4th day of November, 1899, in favor of the plaintiff Margaret J. Westcott, and

5140 against the said defendants, for her costs therein, and

Whereas, in and by the said judgment it was further ordered, adjudged and decreed that the defendants in the said action, their agents, successors and assigns should be perpetually enjoined and restrained from maintaining or in any way using the elevated railway structure on Forty-second Street in front of and adjoining said premises known as No. 155 East Forty-second street in said city, and from operating trains of cars there-
5141 on on and after ninety days from the entry of said judgment except as in said judgment provided; and

Whereas, in and by said judgment it was further adjudged and decreed, that in case the defendants shall tender for the purpose of execution by the plaintiff, a form of conveyance or grant by plaintiff to defendants of the property of plaintiff, herein found by said Court to have been taken by defendants, and in case the plaintiff, having executed such conveyance, and grant, and having delivered or tendered for delivery the same to de-
5142 fendants, the defendants shall pay or tender to plaintiff the sum of Five thousand dollars with interest, from November 22nd, 1898, the date of trial of said action, then the judgment of injunction and restraint shall not in any way be operative, and also in case the plaintiff shall not execute and deliver or tender for delivery the said conveyance or grant at the time fixed for the defendants' tendering the said sum of Five thousand dollars with interest as aforesaid, the judgment of injunction and restraint shall not in any way be operative; and the defendants shall tender said

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form of conveyance or grant at least ten days before the expiration of the said ninety days and at the same time fix by written notice a time for the delivery of the conveyance or grant and payment of Five thousand dollars and interest which shall not be less than five days from the notice.

Now Therefore, this instrument made this 22nd day of December, 1899, between Margaret J. Westcott, party of the first part, and The New York Elevated Railroad Company and the Manhattan Railway Company corporations duly organized under the laws of the State of New York, parties of the last part, Witnesseth:

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Whereas, parties of the second part are desirous of complying with the terms of the said judgment and of acquiring an easement in the said East Forty-second street as an open public street, an interest or estate in the land forming the bed of said street appurtenant to the premises above described and of paying to the said Margaret J. Westcott, plaintiff as aforesaid, the sum of Five thousand dollars and interest from November 22nd, 1898, as in said judgment prescribed.

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Now, Therefore, for and in consideration of the sum of Five thousand dollars, to her in hand paid by the parties of the second part hereto, pursuant to the said judgment and decree, the receipt whereof is hereby acknowledged, the party of the first part hereto doth hereby grant and convey unto the parties of the second part hereto, all the right, title and interest of her, the said party of the first part of, in and to the said Forty-second street and the land forming the bed thereof appurtenant to the premises above set forth and the easements therein appurtenant to said premises which are

5146 or may be necessary for the maintenance and operation of the elevated railway of the parties of the second part as at the date of these presents the same is now constructed, maintained and operated.

And the party of the first part doth covenant with the parties of the second part hereto that she is seized of the premises Number 155 East Forty-second street above described, in fee simple and has good right to convey the same. And that the said property is free from encumbrance.

5147 In Witness Whereof, the party of the first part hath hereto set her hand and seal the day and year first above written.

Margaret J. Westcott (LS)

In presence of: E. M. Clarke.

(Documentary Stamp)

City and County of New York, ss.:

On this 22nd day of December, one thousand eight hundred and ninety-nine, before me personally appeared Margaret J. Westcott, to me known,

5148 and known to me to be the individual described in, and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same for the purposes therein mentioned.

E. M. Clarke, Notary Public, N. Y. County. (Seal)

5149

Claimants' Exhibit "J-16"—Conveyance and Release, Geo. Rothmann & Wife to N. Y. El. R. R. Co. & Manhattan Railway Co.

Whereas, George Rothmann acquired title in fee simple absolute to certain premises hereinafter described by four deeds three of which bear date March 22d, 1884, and the last of said deeds bearing date May 1st, 1886, and has been ever since and now is seized and possessed of the said premises, and

Whereas, the said premises are bounded and described as follows, viz.: 5150

Beginning at the corner formed by the intersection of the northerly side of 42d Street with the westerly side of Third Avenue, and running thence westerly along the northerly side of 42d Street one hundred feet; thence northerly parallel with Third Avenue seventy-five feet one inch; thence easterly parallel with 42d Street or nearly so one hundred feet to the westerly side of Third Avenue and thence southerly along the westerly side of Third Avenue seventy-five feet and three inches to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 660, 662, 664 and 666 Third Avenue and 157, 159 and 161 East 42nd Street, in the City of New York; and 5151

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the streets adjacent thereto, as open public streets, and an interest or estate in the land forming the beds of the said streets; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of

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the last part are maintaining and operating an elevated railroad constructed by them or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said parties of the first part or which may hereafter arise to the said parties of the first part or their grantees by reason of the construction, maintenance and operation of the

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said railroad adjacent to the said premises

Now, Therefore, this instrument made this 28th day of January, 1895, between George Rothmann and Mary Rothmann his wife of Sea Cliff, N. Y., parties of the first part and The New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part, Witnesseth: That for and in consideration of the sum of Six thousand five hundred dollars ($6,500), the receipt whereof is hereby ac-

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knowledged, the parties of the first part hereby release the parties of the last part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the parties of the first part or any of them, and including all claims, damages and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

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And, the parties of the first part, hereby grant and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part in said Third Avenue and 42nd Street, and the land forming the beds thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said streets, as the same is now constructed, maintained and operated, and the parties of the first part hereby authorize and consent to the maintenance of the 5156
said structure and the operation of the said railroad through the said streets and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated.

And the said George Rothmann covenants with 5157
the parties of the last part as follows:

First: That the said covenantor is seized in fee of the said property, and has good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances except a mortgage given to secure the payment of $40,000.00.

Fourth: That the said covenantor will execute

or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantor will forever warrant the title to the said property.

In Witness Whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

Geo. Rothmann (Seal)
Mary Rothmann (Seal)

5159 Sealed and delivered in presence of:
August Hasser.

(Acknowledged on February 2, 1895 by George Rothmann and Mary Rothmann.)

Claimants' Exhibit "K" (Claimants' Exhibit "K" for Identification)—Memo. 42nd Spur—Franchise Value.

MEMORANDUM 42D STREET SPUR—FRANCHISE VALUE

Franchise value depends primarily on present
5160 and prospective earning capacity not alone of the spur itself but its contribution to the earnings of the system.

A—GENERAL INCREASE IN TRAFFIC.

1. All Rapid Transit Lines in New York City.

The total traffic on all lines for the year ending June 30, 1923 was 1,610,000,000.

The traffic had doubled in twelve years between July 1, 1911, and June 30, 1923.

In the seven preceding years from July 1, 1904 to June 30, 1911, it had doubled.

The average increase for the five years from

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July 1, 1918 to June 30, 1923, was 101,000,000 passengers per year.

See Exhibit "A".

2. Increase in Traffic of Interborough Rapid Transit.

The passengers carried on the Interborough Rapid Transit Company's lines for the year ending June 30, 1923, were 1,030,000,000.

The traffic has doubled in the fourteen years from July 1, 1909 to June 30, 1923.

5162

The average annual increase for the last five years from July 1, 1918 to June 30, 1923, has been 52,000,000 passengers per year.

The number of passengers carried in the ten months from July 1, 1923 to April 30, 1924, was 891,293,977, indicating a total for the year 1924 of 1,069,553,000 an increase of 3.8 per cent over the number carried during 1923.

The increase in the number carried during the fiscal year ending June 30, 1923 over the year ended June 30, 1922, was 31,682,441 or 3.2 per cent. The decrease in passengers carried during the fiscal year ending June 30, 1922, over the number carried for the year ending June 30, 1921, was 20,186,141 or 2.0 per cent.

5163

See Exhibit "B" showing the traffic on the Interborough Rapid Transit since 1905.

3. Manhattan Division of the Interborough Rapid Transit.

The number of passengers carried on the Manhattan Division, that is, the elevated portion of the Interborough Rapid Transit Company's lines, during the year ending June 30, 1923, was 350,000,000.

5164 Practically the same number were carried during the year ending June 30, 1922.

The number of passengers carried during the ten months from July 1, 1923, to April 30, 1924, was 298,012,697, indicating a total for the year ending June 30, 1924, of 358,000,000, an increase of 8,000,000 or 2.3 per cent over the number carried during the previous year.

The passengers carried by the Manhattan Division have doubled in the sixteen years since July 1, 1907.

5165 The number of passengers carried annually for the last five years has been practically stationary but is now showing a tendency to increase due to the fact that the natural growth of travel has reached the point where the competition of the New York Municipal Railways subway and the Lexington Avenue subway are neutralized.

Exhibit "C" shows the growth on the Elevated Division from 1880.

4. Traffic on the Third Avenue Line of the Elevated.

5166 The number of passengers carried on the 3d Avenue Line during the year ending June 30, 1923, was 139,932,143 or 40% of the total on the Division.

The number of passengers carried on this line during the ten months from July 1, 1923 to April 30, 1924, was 118,614,007, indicating a total for the year of 142,000,000, an increase of 2,000,000 or 1.5 per cent over the number carried during the previous year.

The average annual increase in the last five years from July 1, 1918 to June 30, 1923, has been 2,878,972 per year.

5167

Exhibit "C" shows the growth on the 3d Avenue Line since 1910.

CONCLUSION

The growth of traffic on all of these transportation facilities is tremendous and there is no evidence of cessation of growth at the present time.

With respect to the Elevated the tendency to large growth is intensified since competition, which has tended to reduce travel on the Elevated lines during the past five years appears now to be neutralized and no additional competition can be 5168
effective within five to eight years. The rate of growth on the Elevated lines should outstrip that on the Rapid Transit lines as a whole.

B—INCREASE IN TRAFFIC IN THE 42D STREET DISTRICT.

1. The ticket sales at all Rapid Transit stations in the 42d Street district, not including Grand Central Station of the New York Central Railroad and the railroads using that terminal, were, for the year ended June 30, 1923, 103,000,000.

The ticket sales have doubled in the seven years from July 1, 1916 to June 30, 1923. 5169

The ticket sales for the fiscal year ending June 30, 1923, were 8,542,672 or 9.07 per cent more than those for the corresponding twelve months ending June 30, 1922.

The average annual increase in the past five years from July 1, 1918 to June 30, 1923, has been 8,560,046.

Exhibit "D" shows the ticket sales at all the Rapid Transit lines in the 42d Street district.

2. Traffic on 42d Street Spur.

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The ticket sales on the spur for the year ending June 30, 1923, were 1,358,383.

The average yearly decrease for the five years from July 1, 1918 to June 30, 1923, was 60,816 tickets per year.

The number of tickets sold in the five months from July 1, 1923 to November 30, 1923, was 627,941, against 546,800 for the same period in 1922, showing an increase of 81,141 or 14.8 per cent. At this rate of increase the total for the year ending June 30, 1924 would have been 1,560,000.

5171

The increase in the number of tickets sold during the fiscal year ending June 30, 1923 over the year ending June 30, 1922, was 68,283; 5.3%.

Exhibit "G" shows the growth on the 42d Street spur since 1900.

3. Traffic at 42d Street Station on the Main Line of the 3rd Ave. "L".

The ticket sales at this station for the fiscal year ending June 30, 1923, were 3,683,883 or 7.04 per cent more than for the corresponding twelve months ending June 30, 1922.

5172

The average annual increase in the past five years from July 1, 1918 to June 30, 1923 has been 173,301.

The number of tickets sold at this station during the five months from July 1, 1923 to November 30, 1923 was 1,722,907 compared with 1,478,100 for the same period in the previous year, showing an increase of 244,807 or 16.6 per cent. At this rate of increase the ticket sales for the year ending June 30, 1924 would normally be 4,295,000. The actual total should, however, be greater than this on account of the absorption of some of the spur traffic.

Exhibit "G" shows the growth at this station since 1900.

5173

C—Loss of Passengers Due to Cessation of Operation of Spur.

Trains on the 3d Avenue Elevated either run direct or connect to points in common with the Lexington Avenue subway on the West Farms Lines between Jackson Avenue and East 241st Street, and by means of free transfers at 149th Street subway passengers may take the 3d Avenue Elevated for points on the 3d Avenue line and Webster Avenue between 149th Street and Gun Hill Road.

5174

Therefore, the Lexington Avenue subway and the 3d Avenue Elevated are in competition not only from South Ferry to 129th Street but also to points on the lines described. These are the only lines between which this direct competition exists.

The distances from 42d Street to important points on 3d Avenue Line are:

42d Street to South Ferry	4.11 miles
42d Street to 149th Street	5.59 miles
42d Street to 143d Street	5.27 miles
42d Street to 149th Street	5.59 miles
To Gun Hill Road via 3d Ave. Line	11.07 miles
To Gun Hill Road via West Farms Line	11.50 miles
To East 241st St. via 3d Ave. Line	13.03 miles
To East 241st St. via West Farms Line	13.50 miles

5175

1. Explanation of Exhibits

Exhibits "E", "F" and "G" show sales at the Spur Station, 3d Ave. and 42d Street Station and at the combined Spur and 3d Ave. Stations.

5176 Exhibit "E" shows the total ticket sales for succeeding twelve-month periods, ending with the months indicated at the bottom of the chart. That is to say, the total spur sales of 1,309,160 shown for March 1923 represents a year's sales beginning April 1, 1922 and ending March 31, 1923. In the same way the spur sales of 1,439,524 shown for November 1923 represent the total for the year beginning December 1, 1922 and ending November 30, 1923. All three curves on this exhibit are plotted on the same principle. As will be seen,
5177 traffic has been increasing at a practically uniform rate between March and November 1923 and the average rate of increase of these eight 12 month periods has been used to establish the normal trend lines on the diagrams. From this average normal trend the yearly normal totals have been computed for the 12 month periods subsequent to November 1923, which was the last full month of spur operation. The actual sales are then subtracted from the estimated normal sales for the periods to show the losses in the case of the spur and of the combined stations, or vice versa to show the gain at
5178 the 3d Ave. Station where the sales have increased above normal since the closing of the spur. The losses and gains are then divided by the number of days in which they have occurred (that is, since the date of December 6, when spur operation ceased) in order to give the average daily loss or gain since cessation of spur operation. Thus for the twelve-month period ending February 1924 the average daily loss of spur sales is shown to be 4,043 of which an average of 2,513 have been regained at the 3d Avenue Station, leaving an average net loss for the combined stations of 1,530. It must be clearly remembered that the losses and

5179

gains shown on the chart are not single monthly values but are averages in which weight is given to traffic over twelve-month periods. The purpose of constructing the chart in this manner is to eliminate the fluctuations of seasonal monthly figures and, by considering twelve-month periods, to establish a true average trend of growth which gives weight not only to growth in the immediate month involved, but to growth in the preceding eleven months as well.

Exhibit "F" shows curves of actual monthly sales at each of the stations involved and of the combined stations. The dotted lines on this Chart show the average normal trend lines as established on Exhibit "A."

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Exhibit "G" shows curves of actual yearly sales from 1900 to 1923 for the fiscal years ending June 30. The dotted lines indicate the average trend lines as established on Exhibit "A." It will be noticed that the average trend of present growth is closely parallel to that in the years 1916 to 1917 before the Lexington Ave. Subway was opened. The effect of the opening of new subways on elevated traffic at these stations is clearly indicated. Now that the increasing demands of traffic have congested the existing subways, so that their rate of growth is falling while that of the elevated lines is rising rapidly, all indications point to a repetition of the growth of elevated traffic at these stations similar to that experienced prior to the opening of the Lexington Avenue Subway.

5181

Exhibit "H" shows graphically the present rates of growth at elevated and subway stations in the 42d Street District. This chart shows the true trend of increase as it is based, like Exhibit "A," on twelve-month periods ending with the months indicated.

2. Loss of Eastbound Spur Sales

Basis A.

The following table gives the actual growth at stations in the 42d St. area for various periods since January 1923 over corresponding periods in the previous year:

				Combined					
			Spur Station	3rd Ave. & 42nd St.	Spur & 3rd Ave.	42nd St. & 2nd Ave.	G.C.T. Subway Stations	Times Square Subway	All 42nd St. Subway Stations
6	Month	Jan.-June	10.4%	11.6%	11.3%	11.6%	10.1%	7.7%	8.8%
11	"	Jan.-Nov.	12.4%	13.9%	13.5%	13.8%	9.4%	7.7%	8.4%
5	"	July-Nov.	14.8%	16.6%	16.1%	16.4%	8.6%	7.7%	8.1%
5	"	Dec. 1923 to Apr. 1924	Closed	40.1%*	3.4%*	17.8%	8.2%	7.8%	7.9%

NOTE: * Reflects gains and losses due to discontinuance of spur.

The close similarity between the growth at the Combined Spur & 3d Ave. Stations and that at 42d St. and 2d Avenue, makes the 2d Avenue Station a very accurate criterion of what might have been expected at the combined stations had the spur remained in operation. The percentages of growth at 2d Avenue are in all cases prior to November 1923, just three tenths of one per cent higher than they were at the combined stations. On this basis the growth at the combined stations for the five months, December 1923 to April 1924, would have been 17.5%. Estimating on this basis the traffic at the combined stations for the five months would have been:

Dec. 1922 to April 1923	Increase	Dec. 1923 to April 1924
2,059,836	17.5%	2,420,307

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The actual ticket sales were:

Spur Station	25,243	
3d Ave. Station	2,104,388	2,129,631
Showing a loss in sales for 146 days of		290,676
An average daily loss since closing of spur of		1,991

The spur sales from December 1922 to April 1923 were 557,823 which if increased by 17.5% would give a normal spur traffic of 655,442 or 4,312 per day. The average loss has therefore been 46.2%.

5186

Basis B.

On the basis of the average yearly figures on Exhibit "A," the loss for the five months since spur discontinuance is shown to be 1,943 per day or 46% of the estimated normal spur traffic. While the method used for constructing this chart (viz twelve-month periods) will give a true result over a twelve month period, it will not give a really true average until a full twelve months have elapsed since the spur was abandoned. It will be noticed that the average daily losses as shown by this chart are increasing. This is logical because at the start the figures contain eleven months in which no losses occurred while each succeeding month lessens the number of non-loss months and increases the number of months in which there actually was loss. For the same reasons the gains at the 3d Avenue Station are showing a decrease for each period. It will therefore not be possible before December 1924 to state actually what the average loss for the twelve month period has been, but if it keeps on increasing at the same rate the average

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5188 loss in the twelve month period ending December 1924 should be

$$\frac{1943-974\times366}{146}=2{,}429 \text{ per day}$$

This is equivalent to 53.7% of the estimated average daily normal traffic for the year ending December 1924.

This seems a reasonable result in view of the fact that Basis A gives a loss of 46.2% for the five month period, December to April, which, in the 5189 light of previous years, should be below the yearly average. It would seem fair to establish a loss of 50% as a result of the preceding analyses.

3. TOTAL TRAFFIC LOSS.

The eastbound spur traffic loss at 50% of the normal traffic is:

Present loss based on year ending June 30, 1924	778,400
Year ending June 30, 1918 the previous high point in recent years	931,200
Year ending June 30, 1904 the maximum reached by the spur	1,136,700

5190 A study of the traffic chart for the combined spur and 3d Avenue Station (Exhibit "G") shows that traffic rose steadily from 1900 to 1904 when the first subway was opened. It then fell off rapidly to a low point in 1906. From 1906 to 1915 the traffic readjusted itself to subway competition showing a slow gain marked by somewhat irregular yearly fluctuations. Since 1915, when the elevated third tracking was put in operation, the traffic has shown a rapid and steady growth. In 1917 there was a falling off in the rate of growth on account of the opening of the Lexington Avenue Subway. This continued till 1919 when the rate again rose and has continued to grow until the present time, with the exception of a drop in 1922,

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which was common to all rapid transit lines in Manhattan. This drop can only be accounted for by the period of general industrial depression through which the country was passing at that time, coupled with a considerable shift of population to Brooklyn and Queens in that year, owing to the greater relief from the housing shortage offered in those Boroughs of the City. Since 1922 the upward growth has been resumed at an ever increasing rate. While the 3d Avenue Station, on account of the increased capacity and convenience of its third track express system, contributed all

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of the increase from the time the Lexington Avenue subway was opened in 1917 up to 1922, the spur traffic has grown steadily and rapidly since 1922 and, at date of acquisition by the City, was increasing at the same rate as that of the 42d Street Station of the 3d Avenue line.

The Grand Central Terminal subway stations on the other hand, have, since July 1923, shown a marked falling off in the rate of growth in ticket sales. The rates of growth for the stations serving the Grand Central Terminal area in December 1923 were:

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Spur Station	18.3%
3d Ave. Elevated	18.4%
Subway Stations	8.3%

The evidence of these figures, together with the well known fact of subway congestion, is that elevated traffic will continue to grow at least until more subways are built.

The estimated spur traffic for future years based on Exhibit "A" is

Year ending June 30, 1924	1,556,808
Year ending June 30, 1925	1,751,718
Year ending June 30, 1926	1,946,628
Year ending June 30, 1927	2,141,538
Year ending June 30, 1928	2,336,448

5194 The maximum previous sales occurred in 1904 when the sales reached 2,273,486.

The discontinuance of the spur, however, affects not only the eastbound traffic but also the westbound traffic which had its origin at stations above or below 42d Street on the 3d Avenue line.

The count of spur passengers made by the I. R. T. on December 3 to 6, inclusive, 1923, established a daily average for those days of 5,062 actual eastbound and 8,959 actual westbound passengers using the spur. The ratio of total to eastbound
5195 passengers was 14,021 to 5,062 or 277%. This ratio compares with the count made by the I. R. T. on March 18 and 22nd, 1921 on the same basis when the ratio found was 298%, and also with a count made by the Public Service Commission on March 23d, 1921, when a ratio of 255% was found between total counted passengers and actual eastbound ticket sales. The actual ticket sales on December 3 to 6 was 19,082, an average of 4,770 per day as against the total count of 14,021, a ratio of 294%.

Ticket sales and actual passengers in any one di-
5196 rection would no doubt tend to equalize if compared over longer period than those in which the counts were made, so that it appears conservative to use the ratio of 277% established by the latest count.

The total traffic loss due to spur discontinuance therefore is:

Year ending June 30, 1924	778,400	x 2.77	= 2,156,168
Year ending June 30, 1918	931,200	x 2.77	= 2,579,424
Year ending June 30, 1904	1,136,700	x 2.77	= 3,148,659

4. LOSS IN NET REVENUE.

Apart from the cost of operating the spur shown on Table III, the only saving that will be made, due to discontinuance of spur operation, is the cost of hauling the passengers lost, to and from destination on the 3d Avenue line. No trains have been taken off the 3d Avenue line since discontinuance, so that the operating cost of that line remains unaffected except as stated above. Table IV gives the average cost of hauling a passenger during the last six months of 1923.

The estimated loss in Net Revenue will therefore be as follows: 5198

A—On Basis of Average Loss Year Ending June 30, 1924		
Losses		
Gross Revenue lost—2,156,168 passengers at 5c. =		$107,800
Savings		
Cost of Operation Table III	$41,230	
Power hauling 2,156,168 passengers on 3d Avenue @ $.0004732 each = ...	1,020	42,250
Total Net Loss per Year		$ 65,550
B—On Basis of Average Loss Year Ending June 30, 1918		
Losses		
Gross Revenue lost—2,579,424 passengers at 5c. =		$128,970
Savings		
Cost of Operation Table III	$41,230	
Power hauling 2,579,424 passengers on 3d Avenue @ $.0004732 each = ...	1,220	42,450
Total Net Loss per Year		$ 86,520
C—On Basis of Average Loss Year Ending June 30, 1904		
Losses		
Gross Revenue lost—3,148,659 passengers at 5c. =		$157,430
Savings		
Cost of Operation Table III	$41,230	
Power hauling 3,148,659 passengers on 3d Avenue @ $.0004732 each = ...	1,490	42,720
Total Net Loss per Year		114,710

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5. RECAPITULATION.

The loss in Net Revenue to the Interborough Rapid Transit Company due to discontinuance of spur operation is estimated to be at the rate of $65,550 per year in the year of discontinuance, and at the rate of $114,700 in the year when it again would have reached the maximum traffic of 1904.

D.—CONCLUSIONS.

The cessation of operation of the 3d Avenue spur has already caused the net loss of revenue to the Manhattan Division. This loss will increase as traffic increases.

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This loss of revenue to the Manhattan Division is important to the Stockholders of the Manhattan Railway Company as it directly effects the amount of rental which they are to receive from the Interborough Rapid Transit Company under the terms of the "Plan of Readjustment" dated November 12, 1922.

This perpetual franchise has other value not so easily translated into terms of money. It is conceivable that the time may come when it will be desirable to extend this spur to Second Avenue to connect with the Second Avenue Elevated, as well as the Third Avenue Elevated, so as to disseminate the traffic originating in the 42d Street district.

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The value of the easements for the portion of the spur between 3d Avenue and Park Avenue is probably the greater part of the value of all the easements that will be necessary from Second Avenue to Park Avenue.

Claimants' Exhibits. 5203

Ticket Sales at I. R. T. Stations Serving G. C. Terminal Area.

Note: The percentages of increase shown are those over the corresponding periods of the previous year.

Period 1922	42nd St. Spur Total	42nd St. Spur Daily	42nd St. Spur % Incr.	3rd Ave. Elevated 42nd St. Station Total	3rd Ave. Elevated 42nd St. Station Daily	3rd Ave. Elevated 42nd St. Station % Incr.	Subway Stations G. C. Terminal Total	Subway Stations G. C. Terminal Daily	Subway Stations G. C. Terminal % Incr.
July	108,100	3,487		277,400	8,948		2,222,341	71,688	
August	112,040	3,614		284,410	9,175		2,296,744	74,089	
September	112,760	3,759		296,790	9,893		2,450,969	81,698	
October	111,740	3,605		319,600	10,310		2,744,548	88,534	
November	102,160	3,405		299,900	9,997		2,735,907	91,196	
December 1-6	21,340	3,557		59,460	9,910		574,204	95,701	
December 7-31	87,000	3,480		243,540	9,742		2,401,519	96,061	
Total December	108,340	3,495		303,000	9,774		2,975,723	95,991	
January 1923	110,360	3,560		297,800	9,606		3,083,435	99,466	
February	97,200	3,471		262,900	9,389		2,699,746	96,419	
March	117,920	3,804		310,100	10,003		3,090,021	99,678	
April	124,003	4,133		328,213	10,940		2,885,414	96,180	
May	127,803	4,123		355,546	11,469		2,845,351	91,786	
June	125,957	4,199		348,224	11,607		2,722,985	90,765	
Total Fiscal Year 1922-3	1,358,383	3,722	+ 5.3	3,683,883	10,093	+ 7.0	32,753,214	89,735	
July	121,417	3,917	+12.3	322,741	10,411	+16.4	2,442,587	78,793	+ 9.9
August	124,055	4,002	+10.7	331,716	10,701	+16.6	2,426,774	78,283	+ 5.7
September	123,433	4,114	+ 9.4	339,557	11,318	+14.4	2,567,852	85,594	+ 4.8
October	135,594	4,374	+21.3	376,827	12,156	+17.9	3,102,208	100,071	+13.0
November	123,442	4,115	+20.9	352,066	11,735	+17.4	3,009,837	100,327	+10.0
Actual December 1-6	25,243	4,207	+18.3	70,387	11,731	+18.4	623,046	103,841	+ 8.5
Actual December 7-31	Closed	....	...	360,811	14,432	+48.1	2,575,477	103,018	+ 7.2
Actual Month of December	25,243	....	...	431,198	13,910	+42.3	3,198,523	103,178	+ 7.5
Actual December 1-6	25,243	4,207	+18.3	70,387	11,731	+18.4	623,046	103,841	+ 8.5
Estimated Normal Dec. 7-31 Based on same period in 1922 at ratios of increase as found for Dec. 1-6	102,900	4,116	+18.3	288,300	11,532	+18.4	2,605,900	104,236	+ 8.5
Month of December Estimated normal with Spur in operation	128,143	4,134	+18.3	358,687	11,571	+18.4	3,228,946	104,160	+ 8.5
Difference between Actual and Estimated normal sales for 25 days Dec. 7-31 incl.	—102,900	—4,116		+72,511	+2,900		—30,423	—1,218	

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Note: Estimated Net Loss to Elevated Stations 25 days December 30,389 or 1,216 per day.
" " " to All Stations " " 60,812 or 2,424 " "

5206 *Claimants' Exhibits.*

COST OF OPERATING 42d STREET SPUR

	Maintenance of Way	Items varying as Track Miles	Items varying as Car Miles	Total Chargeable to Spur
		$	$	$
1	Salaries—Eng. Dept.	121,776.27		495.62
2	Expenses—Eng. Dept.	5,762.61		23.45
4	Ties	34,758.16		141.46
5	Running Rails		12,468.76	13.29
6	Guard Rails	23,182.88		94.35
7	Rail Fastenings & Joints		35,354.34	37.68
8	Special Work		4,059.31	4.32
9	Roadway & Track Labor	204,215.37		831.16
	" " " "		68,071.79	72.56
10	Misc. Roadway & Track Expenses	29,173.10		94.31
	" " " "		7,724.36	8.23
11	Cleaning and Sanding Track	5,238.40		21.32
5207 12	Removal of snow, ice & sand	11,988.67		48.79
18	Elevated Structure Repairs	345,891.47		1,407.78
19	Elevated Structure Painting	50,578.45		205.85
21	Signal and Interlocking Repairs	223,396.39		909.22
22	Telephone & Telegraph Repairs	21,275.01		86.59
23	Other Miscellaneous Way Ex.		70,985.31	75.66
24	Underground Conduit Repairs		9,779.04	10.42
25	Transmission System Repairs		1,662.07	1.77
26	Overhead Feeder Repairs		2,012.16	2.14
27	Underground Feeder Repairs		1,016.47	1.08
28	Track Bonding	6,262.58		25.49
29	Third Rail and Fixtures	59,015.56		240.19
30	Miscellaneous Electric Line Ex.		12,255.89	13.06
31	Power Station Repairs		4,700.95	5.01
32	Sub-Station Repairs		1,512.40	1.61
33	Shop Repairs		29,759.36	31.72
34	Stations, etc. Repairs	161,954.21	Ratio to all stations	1,245.80
35	Dock and Wharves Repairs		2,850.43	3.04
36	Other Buildings Repairs		19,702.49	21.00
5208 37	Joint Way and Structure		61,106.38	65.13
	Total	161,954.12	1,136,514.92	345,021.51	1,643,490.64
	Portion Chargeable to Spur	1,245.80	4,625.62	367.76	6,239.11

Car Miles System.	65,061,092	Track Miles System	99.23	No. Station System....	130
Car Mile Spur....	69,350	Track Miles Spur...	0.4043	No. Station Spur.....	1
% Spur to System	.1066	% Spur to System..	.407	% Spur to System.....	.769

COST OF OPERATING 42d STREET SPUR

	Maintenance of Equipment	Items varying as Track Miles $	Items varying as Car Miles $	Total Chargeable to Spur $
1	Salaries, Motive Power Dept.		22,456.40	23.94
2	Expenses, Motive Power Dept.		639.43	0.68
3	Salaries, Car Equipment Dept.		109,198.75	116.40
4	Expenses, Car Equipment Dept.		10,038.24	10.70
5	Furnaces, Boilers & Accessories, Repairs		133,836.60	142.66
6	Steam Engines, Repairs		11,991.68	12.78
7	Power Plant Elec. Equipment Repairs		10,696.06	11.40
8	Misc. Power Plant Equipment Repairs		6,011.69	6.41
9	Sub-Station Equipment Repairs		4,491.42	4.79
10	Passenger & Combination Cars, Repairs		639,318.06	681.46
12	Locomotives, Repairs		94.54	0.10
13	Service Cars, Repairs		4,761.41	5.07
14	Elec. Equipment of Cars, Repairs		440,490.03	469.53
15	Shop Machinery & Tools, Repairs		8,783.17	9.36
16	Shop Expenses		198,456.18	211.54
17	Vehicles, Repairs		8,691.28	9.26
18	Other Misc. Equipment Expenses		5,053.85	5.39
	Total		1,615,008.79	1,721.47
	General Expenses Total		912,069.96	972.19
	Traffic Total		586.05	.62

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5212 *Claimants' Exhibits.*

COST OF OPERATING 42d STREET SPUR

	Transportation		Items varying as Track Miles $	Items varying as Car Miles $	Total Chargeable to Spur $
1	Salaries, Superintendent's Dept.			289,138.47	308.20
2	Expenses, Superintendent's Dept.			13,693.18	14.60
5	Labor, Power Plant			407,403.31	434.26
6	Labor, Sub-Stations			80,274.35	85.57
7	Fuel for Power			3,028,097.94	3,227.71
8	Water for Power			10,624.56	11.32
9	Lubricants for Power			9,579.83	10.21
10	Misc. Power Plant Supplies & Expenses			43,752.83	46.64
11	Sub-Station Supplies & Expenses			11,677.18	12.66
12	Power Purchased			140.19	0.15
14	Power Exchanged—Balance			1,634,817.76	1,742.59
16	Passenger Motormen			See Summary	
5213 17	Passenger Conductors & Guards			See Summary	
19	Misc. Car Service Employees			See Summary	
20	Lubricants and Waste for Cars			18,131.33	19.33
21	Light for Cars			24,494.70	26.11
22	Car Cleaning Supplies			3,687.96	3.93
23	Cost Tickets	32,453.27	Ratio to all tickets		249.64
24	Other Car Supplies & Expen.			63,604.83	67.80
25	Station Employees			See Summary	
26	Station Expenses	97,078.35	Ratio to all stations		746.76
27	Car House Inspection Labor			180,761.53	192.68
28	Car Cleaners			103,246.67	110.05
29	Lamp Trimmers			19,097.81	20.36
31	Oper. of Signal & Interlocking		262,274.45		1,067.45
32	Oper. of Telephone & Telegraph		15,461.40		62.93
34	Other Transportation Expenses			41,561.64	44.30
35	Joint Operation of Cars, Dr.			231,447.18	246.70
	Total	129,531.62	277,735.85	2,945,797.73	
	Total Chargeable to Spur	996.40	1,130.38	3,139.99	5,266.77

5214

Tickets Collected System	348,524,700
Tickets Collected Spur	1,358,383
% Spur to System	.3897

NOTE: Figures in dark type are red in original.

Claimants' Exhibits.

5215

COST OF OPERATING 42d STREET SPUR

SUMMARY

			L & M	Labor Only	5% Wage Increase	L & M + Wage Increase
M/W	Labor	74.048%	6,239.11	4,619.94	230.99	6,470.10
M/E	Labor	67.482%	1,721.47	1,161.68	58.08	1,779.55
Transportation	Labor	60.00%	5,266.77			
*Transportation	Labor	100.00%	25,291.62	28,451.68	1,422.58	31,980.97
Traffic	Labor	100.00%	2.38	2.38	.12	2.50
General	Labor	50.00%	972.19	486.09	24.30	996.49
Total Cost of Operation						41,229.61

* From S. D. Smith, covers Passengers, Motormen, Conductors and Guards, Miscel. Car Service Employees, and Station Employees.

5216

TABLE IV.

COST OF HAULING SPUR PASSENGERS OVER THE 3d AVE. LINE

Cost of Power on Manhattan System.
Six Months Ended Dec. 31, 1923.

Account #5—Labor Power Plant	$ 209,806
Account #6—Labor Substations	41,616
Account #7—Fuel for power	1,348,932
Account #8—Water for power	5,688
Account #9—Lubricants for power	3,994
Account #10—Miscellaneous Power Plant Supplies & Expenses	24,332
Account #11—Substation Supplies & Expense	6,600
Account #12—Power Purchased	18
	1,640,986
Less Account #14 Power Exchanged (Used by subway)	953,548
Total Cost Manhattan System	$ 687,438

5217

Passengers Carried in Same Period		178,682,743
Cost per passenger including weight of Cars		$ .003847
During this period:		
Average Cars per Train	was	5.007
Average Passengers per train	was	294.4
Average Passengers per car	was	58.8
The relative weight of passengers & cars therefore was:		
Car weight without passengers	58,500 lbs. =	87.7%
Passengers 58.8 x 140 lbs.	8,232 lbs. =	12.3%
Total per car	66,732 lbs.	100.

Average Cost of Hauling Each Passenger was, therefore, 12.3% of $.003847 = $ .0004732

NOTE: General expenses not included as they are not affected by loss of spur passengers.

5218 *Claimants' Exhibits.*

Claimants' Exhibit K-1—Chart.

(This chart is printed at page 1910 of the record.)

Claimants' Exhibit K-2—Chart.

(This chart is printed at page 1912 of the record.)

Claimants' Exhibit K-3—Chart.

(This chart is printed at page 1914 of the record.)

5219

Claimants' Exhibit K-4—Chart.

(This chart is printed at page 1916 of the record.)

Claimants' Exhibit K-5—Chart.

(This chart is printed at page 1918 of the record.)

Claimants' Exhibit K-6—Chart.

5220 (This chart is printed at page 1920 of the record.)

Claimants' Exhibit K-7—Chart.

(This chart is printed at page 1922 of the record.)

Claimants' Exhibit K-8—Chart.

(This chart is printed at page 1924 of the record.)

Claimants' Exhibit "L"—Cost of Operating 42nd St. Spur.

TABLE III.

COST OF OPERATING 42d STREET SPUR

	Maintenance of Way	Items varying as Track Miles $	Items varying as Car Miles $	Total Chargeable to Spur $	
1	Salaries—Eng. Dept.	121,776.27		495.62	
2	Expenses—Eng. Dept.	5,762.61		23.45	
4	Ties	34,758.16		141.46	
5	Running Rails		12,468.76	13.29	
6	Guard Rails	23,182.88		94.35	
7	Rail Fastenings & Joints		35,354.34	37.68	
8	Special Work		4,059.31	4.32	5222
9	Roadway & Track Labor	204,215.37		831.16	
	" " " "		68,071.79	72.56	
10	Misc. Roadway & Track Expenses	23,173.10		94.31	
	" " " "		7,724.36	8.23	
11	Cleaning and Sanding Track	5,238.40		21.32	
12	Removal of snow, ice & sand	11,988.67		48.79	
18	Elevated Structure Repairs	345,891.47		1,407.78	
19	Elevated Structure Painting	50,578.45		205.85	
21	Signal and Interlocking Repairs	223,396.39		909.22	
22	Telephone & Telegraph Repairs	21,275.01		86.59	
23	Other Miscellaneous Way Ex.		70,985.31	75.66	
24	Underground Conduit Repairs		9,779.04	10.42	
25	Transmission System Repairs		1,662.07	1.77	
26	Overhead Feeder Repairs		2,012.16	2.14	
27	Underground Feeder Repairs		1,016.47	1.08	
28	Track Bonding	6,262.58		25.49	
29	Third Rail and Fixtures	59,015.56		240.19	
30	Miscellaneous Electric Line Ex.		12,255.89	13.06	
31	Power Station Repairs		4,700.95	5.01	
32	Sub-Station Repairs		1,512.40	1.61	5223
33	Shop Repairs		29,759.36	31.72	
34	Stations, etc., Repairs	161,954.21	Ratio to all stations	1,245.80	
35	Dock and Wharves Repairs		2,850.43	3.04	
36	Other Buildings Repairs		19,702.49	21.00	
37	Joint Way and Structure		61,106.38	65.13	
	Total	161,954.12	1,136,514.92	345,021.51	1,643,490.64
	Portion Chargeable to Spur	1,245.80	4,625.62	367.76	6,239.11

Car Miles System	65,061,092	Track Miles System	99.23	No. Station System	130
Car Mile Spur	69,350	Track Miles Spur	0.4043	No. Station Spur	1
% Spur to System	.1066	% Spur to System	.407	% Spur to System	.769

5224

Claimants' Exhibits.

TABLE III.

COST OF OPERATING 42d STREET SPUR

	Maintenance of Equipment	Items varying as Track Miles $	Items varying as Car Miles $	Total Chargeable to Spur $
1	Salaries, Motive Power Dept.		22,456.40	23.94
2	Expenses, Motive Power Dept.		639.43	0.68
3	Salaries, Car Equipment Dept.		109,198.75	116.40
4	Expenses, Car Equipment Dept.		10,038.24	10.70
5	Furnaces, Boilers & Accessories, Repairs		133,836.60	142.66
6	Steam Engines, Repairs		11,991.68	12.78
7	Power Plant Elec. Equipment Repairs		10,696.06	11.40
8	Misc. Power Plant Equipment Repairs		6,011.69	6.41
9	Sub-Station Equipment Repairs		4,491.42	4.79
5225 10	Passenger & Combination Cars, Repairs		639,318.06	681.46
12	Locomotives, Repairs		94.54	0.10
13	Service Cars, Repairs		4,761.41	5.07
14	Elec. Equipment of Cars, Repairs		440,490.03	469.53
15	Shop Machinery & Tools, Repairs		8,783.17	9.36
16	Shop Expenses		198,456.18	211.54
17	Vehicles, Repairs		8,691.28	9.26
18	Other Misc. Equipment Expenses		5,053.85	5.39
	Total		1,615,008.79	1,721.47
	General Expenses Total		912,069.96	972.19
	Traffic Total		586.05	.62

5226

TABLE III.

COST OF OPERATING 42d STREET SPUR

	Transportation		Items varying as Track Miles $	Items varying as Car Miles $	Total Chargeable to Spur $	
1	Salaries, Superintendent's Dept.			289,138.47	308.20	
2	Expenses, Superintendent's Dept.			13,693.18	14.60	
5	Labor, Power Plant			407,403.31	434.26	
6	Labor, Sub-Stations			80,274.35	85.57	
7	Fuel for Power			3,028,097.94	3,227.71	
8	Water for Power			10,624.56	11.32	
9	Lubricants for Power			9,579.83	10.21	
10	Misc. Power Plant Supplies & Expenses			43,752.83	46.64	
11	Sub-Station Supplies & Expenses			11,877.18	12.66	
12	Power Purchased			140.19	0.15	5228
14	Power Exchanged—Balance			1,634,817.76	1,742.59	
16	Passenger Motormen			See Summary		
17	Passenger Conductors & Guards			See Summary		
19	Misc. Car Service Employees			See Summary		
20	Lubricants and Waste for Cars			18,131.33	19.33	
21	Light for Cars			24,494.70	26.11	
22	Car Cleaning Supplies			3,687.96	3.93	
23	Cost Tickets	32,453.27		Ratio to all tickets	249.64	
24	Other Car Supplies & Expen.			63,604.83	67.80	
25	Station Employees			See Summary		
26	Station Expenses	97,078.35		Ratio to all stations	746.76	
27	Car House Inspection Labor			180,761.53	192.68	
28	Car Cleaners			103,246.67	110.05	
29	Lamp Trimmers			19,097.81	20.36	
31	Oper. of Signal & Interlocking		262,274.45		1,067.45	
32	Oper. of Telephone & Telegraph		15,461.40		62.93	
34	Other Transportation Expenses			41,561.64	44.30	
35	Joint Operation of Cars, Dr.			231,447.18	246.70	
	Total	129,531.62	277,735.85	2,945,797.73		5229
	Total Chargeable to Spur	996.40	1,130.38	3,139.99	5,266.77	

Tickets Collected System	348,524,700
Tickets Collected Spur	1,358,383
% Spur to System	.3897

NOTE: Figures in dark type are red in original.

5230 *Claimants' Exhibits.*

TABLE III.

COST OF OPERATING 42d STREET SPUR

SUMMARY

			L & M	Labor Only	5% Wage Increase	L & M + Wage Increase
M/W	Labor	74.048%	6,239.11	4,619.94	230.99	6,470.10
M/E	Labor	67.482%	1,721.47	1,161.68	58.08	1,779.55
Transportation	Labor	60.00%	5,266.77			
*Transportation	Labor	100.00%	25,291.62	28,451.68	1,422.58	31,980.97
Traffic	Labor	100.00%	2.38	2.38	.12	2.50
General	Labor	50.00%	972.19	486.09	24.30	996.49
Total Cost of Operation						41,229.61

5231 * From S. D. Smith, covers Passengers, Motormen, Conductors and Guards, Miscel. Car Service Employees, and Station Employees.

5232

Claimants' Exhibit "M"—Tabulation of Burpee's Testimony on Value.

COST TO REPRODUCE AND DEPRECIATED VALUE
AS OF DECEMBER 7, 1923,
OF THE
42nd STREET ELEVATED SPUR FROM PARK TO THIRD AVENUE.

Includes structures pertaining to the Elevated Railroad within the lines of the Condemnation Area, exclusive of the Underground Duct Line and Cables for feeding the Queensboro Subway, and exclusive also of Elevated Structures outside the Condemnation Area rendered useless by the removal of the Spur and the re-construction of the Southbound Station at 3rd Avenue.

Item		Unit	Cost to Reproduce	Depreciation %	Depreciation Amount	Depreciated Value
Foundations	45		$27,406			$27,406
Base Castings & Fenders	124060#		12,406	11.5	$1,426	10,980
Steel	629.62 T	$120	75,554	11.5	8,689	66,865
Drip Pans	2464 S.F.	50c.	1,232	30.0	370	862
Down Spouts			Included in price for Drip Pans			
Track—rails, joints, signals and bumper blocks			12,227	65.7 (av)	8,036	4,191
Deck—Ties, guard timber, track platform, etc.			15,755	67.7 (av)	10,664	5,091
Electrical Distribution			7,577	35.0	2,652	4,925
Station Buildings, Platforms, Stairways and Canopies			28,175	32.9 (av)	9,258	18,917
			$180,332		$41,095	$139,237
Contingencies 5%			9,017		2,055	6,962
			$189,349		$43,150	$146,199
General Expenses:						
Preliminary & organization, Engineering, superintendence, and legal			18,000		1,000	17,000
Interest during construction			4,865			4,865
Cost of Financing			8,842			8,842
Total			$221,056		$44,150	$176,906

5234

5235

FOUNDATIONS.

Excavation—earth	1012	cu. yds.	@ $ 8.64	$ 8,744
Excavation—rock	41	"	@ 10.70	439
Masonry (equivalent concrete)	674	"	@ 18.00	12,132
Pavement Replaced	409	sq. yds.	@ 3.25	1,329
Foundation Bolts	6.48	tons	@ 140.00	907
Back Fill	(Included in price of excavation)			
Waterproofing	220	sq. yds.	@ 8.50	1,870
Steel in Foundations	3.69	tons	@ 120.00	443
Cast Iron Washers	2.63	"	@ 90.00	237
Sidewalk Replaced	(Included in pavement replaced)			
Cleaning up and Spoil	(Included in price for excavation)			
Changes to Sub-Surface Structures:				
5% of above items				1,305
				$27,406
Base Castings & Fenders	62.03	T	@ 200.00	12,406
				$39,812

5236

STRUCTURE.

STEEL WEIGHTS		
Longitudinal Girders	864,040 lbs.	
Transverse Girders	217,320 "	
Columns	129,440 "	
Platform Beams & Supports	27,040 "	
Steel Reinforcing	21,400 "	
	1,239,240 lbs. = 629.62 tons	
Steel Structure	629.62 Tons at $120.00	$75,554
Drip Pans	2,464 S. F. at 0.50	1,232
Down Spouts	9 (included in price for drip pans)	
		$76,786

5237

TRACK

Rails	61.2 tons	at	$ 58.20	$ 3,562
Joints	170 pairs	at	1.06	180
Curving & drilling rail	(included in labor cost)			
Track bolts	1000	at	0.08	80
Spikes	7332	at	0.03	220
Tie plates, rail braces & chocks	823			315
Signals				2,638
Switches	4	at	$262.50	1,050
Bumper Blocks	3			1,900
Labor				
Laying rail tangent				1,177
Laying rail curves				461
Laying switches				644
				$12,227

5238

DECK

Ties	66,800 ft. B. M.	at	$85.00	5,848
Guard Timber	15,120 " "	"	85.00	1,285
Track Platforms	10,200 " "	"	85.00	867
Foot Walks	10,250 " "	"	85.00	871
Pipe Railing	2,050 L. Ft.	"	1.25	2,563
Bolts for ties and guard timber				1,218
Labor				3,103
				$15,755

ELECTRICAL DISTRIBUTION SYSTEM

Third Rail	29.5 ton	at	$58.20	$1,717
Third Rail Insulators	224	at	1.00	224
Third Rail Joints	67	at	3.20	214
Third Rail guard plank	2,000 ft. B. M.	at	58.00	116
Track Bonds	122	at	1.70	207
Third Rail inclines	14	at	10.00	140
Iron Conduit	260 L. F.	at	1.10	286
Cable Brackets	85	at	1.00	85
Cable	400 L. F.			235
Iron Wire	2,000 L. F.			10
Twisted Pair	3,000 L. F.	at	0.02	60
Lag Screws & Bolts				85
Telephone Cable	1,900 L. F.			651
Structure Bonds	60			69
Electric Light Outlets	75			1,010
3 Wire Lighting Cable	1,000	at	.26	260
Equalizer Terminals	30	at	.43	13
Protection blocks for Guard Plank	800	at	.10	80
				5,462
Labor				2,115
				$7,577

5240

STATION BUILDINGS, STATION PLATFORMS, STAIRWAYS, CANOPIES, PLATFORM RAILINGS, PLATFORM SHIELDS, ETC.

Station Platforms	6108 sq. ft.	@	$ 0.66	$ 4,031
Platform Railings	390 lin. ft.			1,683
Platform Shields	117 lin. ft.	@	12.00	1,404
Station Canopies	6108 sq. ft.	@	1.00	6,108
Stairways & Canopy				3,000
Sewer Connections	2	@	200.00	400
Park Avenue Station				7,186
Alarm House (Park Avenue)	3510 cu. ft.	@	0.70	2,457
Brakeman's House, 3rd Ave.	1980 cu. ft.	@	0.60	1,188
Switch Cabin, 3rd Ave.	296 cu. ft.	@	0.60	178
Circuit Breaker House (3rd Ave.)	900 cu. ft.	@	0.60	540
				$28,175

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Claimants' Exhibit "M-1"—Comparison of Estimates.

42nd STREET SPUR

COMPARISON OF ESTIMATES.

	Cost to Reproduce New		Depreciation		Depreciated Value	
	I. R. T.	City	I. R. T.	City	I. R. T.	City
Foundations	$27,406	$25,914	.....	.....	$27,406	$25,914
Base Castings	12,406	12,445	$1,426	.....	10,980	12,445
Steel	76,786	67,542	9,059	$30,888	67,727	36,654
Track	12,227	9,372	8,036	2,343	4,191	7,029
Deck	15,755	14,080	10,664	9,856	5,091	4,224
Electrical	7,577	7,318	2,652	1,098	4,925	6,220
Stations & buildings	28,175	28,336	9,258	11,334	18,917	17,002
5243	$180,332	$165,007	$41,095	$55,519	$139,237	$109,488
Contingencies	9,017	.....	2,055	.....	6,962	.....
	$189,349	$165,007	$43,150	$55,519	$146,199	$109,488
General Overhead	31,707	16,500	1,000	5,550	30,707	10,950
Total	$221,056	$181,507	$44,150	$61,069	$176,906	$120,438

Claimants' Exhibit "N"—Statement of Ticket Sales 1913-1919, 38th St. & 42nd St. at 6th Ave.

Effect Upon Traffic of 42nd Street Elevated Station at 6th Avenue of Opening New Station at 6th Avenue 38th Street Station Opened January 31, 1914.

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	38th St.	42nd St.	Total
1913	.....	4,070,225	4,070,225
1914	755,575	4,086,449	4,842,024
1915	2,043,960	3,738,225	5,782,185
1916	2,390,027	4,184,915	6,574,942
1917	2,799,390	4,819,635	7,619,025
1918	2,949,922	4,914,280	7,864,202
1919	3,154,314	6,292,026	9,446,340
1923	.....	.....	.....

The Broadway subway was opened December 5, 1918.
The 7th Avenue subway was opened June 17, 1917.

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Claimants' Exhibit "O"—Map of Routes of Interborough Rapid Transit Co.

(This map is printed at page 1926 of the record.)

Claimants' Exhibit "P"—Order Confirming Report of Commissioners re Woolsey, et al., in Condemnation Proceedings to Acquire Street Easement.

At a Special Term of the Supreme Court of the County of New York, held at the County Court House in the City of New York, on the 18th day of February, 1888,

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Present: Hon. Morgan J. O'Brien, Justice.

In the Matter of the Petition of the New York Elevated Railroad Company, relative to acquiring title to certain real estate in the City and County of New York. In re Woolsey, *et al.*

A petition having heretofore been presented to this court by the New York Elevated Railroad Company, in form and manner pursuant to the provisions of the act entitled "An Act to authorize the formation of Railroad Companies and to regulate the same," passed April 2nd, 1850, and the acts amendatory thereof and supplemental thereto, praying for the appointment of Commissioners of Appraisal for the purpose of acquiring title to certain real estate in the City and County of New York, said petition being verified the 15th day of May, 1888, and having been presented to a Special Term of this Court on the 7th and 8th days of June, 1888, and said petition setting forth that the said petitioner had constructed and finished an elevated steam railroad along, on and upon the

5247

5248 route set forth in said petition, including in said route a portion of East Forty-second street in the City of New York between Third and Lexington Avenues in said City pursuant to various statutes of the State of New York, referred to in the said petition, that James Renwick is the owner of the lots and premises described in Parcel two of the said petition and known as Nos. 148, 150, 152 and 154 East Forty-second street in the said City; that all the lots aforesaid are on the Southerly side of said East Forty-second street through which the
5249 aforesaid railroad of the petitioner has been constructed; that said James Renwick claims to have a right of property in the said lots and premises contained in and forming part of said East Forty-second street; the said property being certain easements or interests in the said street; that for the purpose of the incorporation of the said New York Elevated Railroad Company and of constructing and operating said railroad there is required so much of the real estate, privileges, easements or other interests in the said East Forty-second Street belonging to the said James Renwick appurtenant to the said lots and premises on said
5250 street as is or may be taken by the petitioner for its use as an elevated steam railway and during the time of its corporate existence as an elevated railway company, and so long as the aforesaid East Forty-second Street is used and maintained as a public street; the said lots being bounded and described as set forth at length in Parcel No. 2 of the said petition, as the same was amended by an order entered herein on the 12th June, 1888, and as hereafter in this order set forth, and that the said petitioner has not been able to acquire title to the said property and cannot agree with the owners of the same for the purchase or use thereof, all of which will more fully appear by

said petition; and said petition containing and setting forth the matters and things required by the statutes in such case made and provided, and a copy of such petition with a notice of the time and place when the same would be presented to the court having been duly served, as required by the statute, upon all persons whose interests herein were to be affected by the proceedings, to wit: upon the said James Renwick, and he having appeared before this court pursuant to notice, and the court having ordered and adjudged that the allegations in the said petition were proven by the evidence or were not disproved by the respondent, James Renwick, and that the petitioner was entitled to the relief asked for therein, and thereupon an order having been duly made by a Special Term of this Court appointing William N. Armstrong, Edward V. Loew and George W. Lyon, three disinterested and competent freeholders residing in the City and County of New York, as commissioners to ascertain and appraise the compensation to be made to the said James Renwick, as the owner of, or person interested in the property proposed to be taken, appropriated or interfered with by the petitioner for the purpose of its incorporation and for the purpose of constructing, maintaining and operating its said railway, as will more fully appear by the order entered herein, and filed in the office of the Clerk of the City and County of New York, on the 25th day of October, 1888; and the said Commissioners having met at the time and place mentioned in the aforesaid order of the 25th day of October, 1888, and having taken and subscribed respectively the oath prescribed by the Twelfth Article of the Constitution, and having first viewed the premises described in the said order amending the said petition, and having heard the proofs and allegations of the

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5254 parties, and having reduced the testimony taken by them to writing, and in all things having complied with the requisitions of the said act and the acts amendatory thereof and supplemental thereto, and having made and filed the report of their proceedings to this court by a paper writing signed by them and dated the 29th day of January, 1889, with the minutes of the testimony taken by them, wherein and whereby they report that they had ascertained the compensation which ought justly to be made by the petitioner, the said James Ren-
5255 wick for the real estate, easements and interests described in the said report to wit: to the said James Renwick as the value of so much of the easements of light, and of air and of access appurtenant to the said lots and premises as have been taken by the petitioner by the construction, maintenance and operation of its elevated railroad through Forty-second street, past the premises in question, the sum of $5,000. the said compensation being by such report assessed as upon the north track and structure and the cross tracks and structures and as upon the south structure without a
5256 track, all of which are shown upon the plan annexed to the said report and as the same existed at the time of signing such report, namely, January 29th, 1889.

Now on reading and considering all the proceedings heretofore had herein, and upon reading the report of the commissioners contained in the said paper writing filed herein on the 30th day of January, 1889, and upon reading and filing the notice of motion on behalf of the petitioner herein dated the 30th day of January, 1889, to confirm the report of the commissioners herein, and after hearing Messrs. Davies & Rapallo, attorneys for the petitioner, and William G. Peckham, Esq., of counsel for the said James Renwick, it is

Ordered, that the motion of the petitioner to confirm the report of the commissioners be and the same hereby is granted, and it is further

Ordered, that the report of the said commissioners contained in the said paper writing dated the 29th day of January, 1889, and filed on the 30th day of January, 1889, be and the same hereby is confirmed; and it is further

Ordered, that the petitioner pay James Renwick $5,000 and his costs and expenses and that upon the payment by the petitioner herein, to the said James Renwick, of the sum of $5,000 with interest thereon from the date hereof and which date it is agreed shall be considered as the date of the said award and assessment and upon the recording of a certified copy of this order in the clerk's office in the City of New York, as required by statute, the New York Elevated Railroad Company shall thereupon be entitled to enter upon take possession of and use for the purpose of its incorporation the real estate, property rights easements and interest referred to in the said order of the 25th day of October, 1888, appointing the said commissioners and in the said report of the said commissioners dated the 29th day of January, 1889, and filed on the 30th day of January, 1889, as aforesaid the same being described as follows namely: so much of the privileges easements or other interests in said East Forty-second street as are taken appropriated or interfered with by the construction, maintenance and operation of the elevated railroad of the petitioner herein belonging to or claimed by James Renwick and appurtenant to the lots and premises on the southerly line of East Forty-second street and bounded and described as follows:

Beginning at a point on the Southerly side of East Forty-second Street distant 141 feet and 8

5260 inches Westerly from the Southwesterly corner of 42nd Street and Third Avenue, running thence Westerly along the Southerly line of 42nd Street 83 feet and 4 inches running thence Southwardly and parallel with Third Avenue 98 feet and 9 inches; running thence Easterly and parallel with 42nd Street 83 feet and 4 inches; running thence Northwardly and parallel with Third Avenue 98 feet and 9 inches to the Southerly line of East 42nd Street to the point or place of beginning, being the same premises conveyed to James Ren-
5261 wick by deed of William Joyce and Elizabeth C. Joyce his wife recorded in the office of the Register of the City and County of New York in Liber 683 of Conveyances at page 193.

To Have and To Hold the same to the New York Elevated Railroad Company its successors or assigns for the purpose of maintaining and operating the elevated railroad described in the petition herein of said company, and as the same has been constructed as in said petition set forth, with rows of columns and superstructure carrying two tracks upon transverse girders, with the right to main-
5262 tain the piers and foundations now constructed and upon the said land, together the right to maintain the columns now constructed and existing in front of the said described premises; the estate hereby taken in the said land being limited to the right to use the same to maintain the said foundations, superstructures, columns and girders and operate a railroad thereon, as now constructed and operated in said East Forty-second street the said South structure thereof being without a track at the present time so long as the aforesaid street is used and maintained as a public street and upon performances of the conditions aforesaid the said James Renwick, his heirs and assigns, and all persons claiming under him, shall be divested

5263

and barred of all the said limited rights, estate and interests in the above described lots and premises so long as East Forty-second Street continues to be occupied and used as a public street; and it is further

Ordered that the said property owners' costs and the expenses of this proceeding be taxed by the clerk of this court on two days' notice after entry of this order by either party to the other. And it is further

Ordered, that the motion herein be granted and the said report is hereby ratified and confirmed.

5264

A Copy, Edward F. Reilly, Clerk.

We approve of the form of this order and waive notice of application for entry thereof both waiving right of appeal as to Parcel No. 2.

Dated New York February 18, 1889.

Peckham & Tyler, Attorneys for the said James Renwick.

[Filed February 20, 1889.]

5265

Claimants' Exhibit "Q"—Statutes and Documents Affecting Elevated Railways in the City of New York.

(This exhibit is the same as Claimants' Exhibit "C," extracts from which are printed at pages 1619 to 1642 of the record.)

Claimants' Exhibits "R" and "R-1" to "R-13"—14 Photographs.

(These photographs are printed at page 1928 of the record.)

5266 *Claimants' Exhibits.*

Claimants' Exhibits "S" and "S-1" to "S-16"—17 Photographs.

(These photographs are printed at page 1930 of the record.)

Claimants' Exhibit "T"—Deed of Easement, from Manhattan Railway Co. et al. to The 25 Broadway Corporation of 24 State St.

5267 Whereas Manhattan Railway Company in or about 1879 constructed as part of its elevated railway in Trinity Place, Borough of Manhattan, City of New York, a spur or branch thereof, extending from a connection with the northbound track of said elevated railway at bent No. 6 as shown on drawing No. 7172 attached hereto southerly upon the east side of Trinity Place and across Morris Street into the property then owned by it at the southeast corner of Morris and Greenwich Streets; and

5263 Whereas Manhattan Railway Company has conveyed the said property to the Twenty-Five Broadway Corporation and the said spur is no longer required for use in the operation of its railway and impairs the light, air and access appurtenant to said property upon which the Twenty-Five Broadway Corporation is about to construct a building; and

Whereas the said railway is leased to the Interborough Rapid Transit Company for a period of 999 years from November 1, 1875, by virtue of an indenture dated January 1, 1903; and

Whereas the said Manhattan and Interborough Companies have heretofore acquired from the

5269

owners of the property abutting upon said spur the street easements of light, air and access necessary to the unimpaired right to the maintenance of said spur;

Now, Therefore; this instrument made this 18th day of February, 1920, between Manhattan Railway Company, as owner and lessor and Interborough Rapid Transit Company as lessee, corporations organized and existing under the laws of the State of New York, having their principal offices at No. 165 Broadway, Borough of Manhattan, City of New York, parties of the first part and

5270

The Twenty-Five Broadway Corporation of 24 State Street, City of New York, Borough of Manhattan, a corporation duly organized and existing under the laws of the State of New York, party of the second part.

Witnesseth, that in consideration of the sum of $18,000. the receipt whereof is hereby acknowledged, the parties of the first part hereby grant and convey to the party of the second part, its successors and assigns, all their right, title and interest in and to the easements in said Trinity Place and Morris Street appurtenant to the property of the said Twenty-Five Broadway Corporation at the southeast corner of Morris and Greenwich Streets heretofore acquired by the said parties of the first part or either of them, necessary to the construction, maintenance and operation of that portion of the said two-track spur 54.57 feet in length shown upon the said drawing No. 7172, which extends south of bent No. 2 to the present termination of said spur upon the sidewalk on the southerly side of Morris Street, including the two columns now on said sidewalk in front of the property of the party of the second

5271

5272 part, the two tracks and all other portions of the said southerly span of said spur now existing above the surface of the ground.

And the said parties of the first part covenant with the party of the second part that the said covenantors and neither of them will reconstruct the said span or any part thereof without first repaying to the said party of the second part the said sum of $18,000. for the easement hereby conveyed.

5273 In Witness Whereof the said Manhattan Railway Company and Interborough Rapid Transit Company have caused these presents to be signed by their respective officers duly authorized thereto and caused their corporate seals to be hereto affixed this 18th day of February, 1920.

Manhattan Railway Company, By Alfred Skitt, President. (Seal) Attest: P. V. Tranque, Asst. Secretary.

Interborough Rapid Transit Company, By Frank Hedley, President. (Seal) Attest: H. M. Fisher, Secretary.

5274 State of New York, County of New York, ss.:

On this 27th day of February, in the year one thousand nine hundred and twenty (1920), before me personally came Alfred Skitt to me known, who, being by me duly sworn, did depose and say that he resides in Yonkers, New York; that he is the President of the Manhattan Railway Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order.

5275

Emil Pensel, Notary Public, Bronx Co. No. 5, New York County No. 19, King's County No. 31, Queens County No. 783, Bronx County Register No. 2111, New York County Register No. 1160, Kings County Register No. 1010. My Commission Expires March 30, 1921.

State of New York, County of New York, ss.:

On this 27th day of February, in the year one thousand nine hundred and twenty (1920), before me personally came Frank Hedley to me known, who, being by me duly sworn, did depose and say 5276
that he resides in Yonkers, New York; that he is the President of the Interborough Rapid Transit Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order.

Emil Pensel, Notary Public, Bronx Co. No. 5, New York County No. 19, King's County No. 31, Queens County No. 783, Bronx County Register No. 2111, New York County Register No. 1160, Kings 5277
County Register No. 1010. My Commission Expires March 30, 1921.

Claimants' Exhibit "U"—Diagram Showing Plottage of Property as of December 7, 1923.

(This diagram is printed at page 1932 of the record.)

5278 *Claimants' Exhibits.*

Claimants' Exhibit "W"—Pamphlet of Division of Franchises of Board of Estimate and Apportionment re Charges for Space in Street.

City of New York
Board of Estimate and Apportionment
Division of Franchises
Room 1307, Municipal Building
Centre and Chambers Streets

5279 Revocable Privileges

Information for Applicants seeking Consents for Pipes, Conduits, Platform Scales, Bridges, Railroad Tracks, Etc., to be placed under, over or upon the Streets of the City of New York

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All applications for consent to the construction, maintenance and operation of pipe lines, conduits, tunnels, bridges, platform scales, railroad tracks and similar structures under, over or upon the public streets in The City of New York should be made to the Board of Estimate and Apportion-
5280 ment.

Such consents when granted are solely for the purpose named in the consent and are for the sole use and benefit of the petitioner, who must own or lease the properties to be benefited, and cannot be sublet, assigned or transferred without special permission from the Board.

All such consents are revocable at the pleasure of the Board or may be terminated in case of failure on the part of the grantee to comply with any of the terms and conditions.

Applications should be made in the form of a

petition and addressed to the Board of Estimate and Apportionment, City of New York.

The petition must contain a definite description of the location of the proposed construction and the properties to be connected or benefited by the same, and should state specifically the uses for which the construction is intended. It should also state whether the properties are owned or leased by the petitioner, and must be signed by a duly authorized official of the corporation, a representative of the firm, or by the individual requesting the consent, who must also own or lease the property or properties to be benefited or connected by the construction. An original and twenty copies of the petition shall be furnished by the petitioner. 5282

A plan, eighteen inches by twenty-four inches, drawn upon tracing cloth, to a definite scale, shall accompany the petition. Upon this plan shall be shown the location of the property of the petitioner on both sides of the street and so marked. The plan shall also show the building lines and curb lines, railroad tracks, electrical conduits, sewers or similar substructures that may be in the street or streets which may be affected in any manner by the proposed construction. Information as to surface and subsurface structures may be obtained from the Department of Water Supply, Gas and Electricity, and from the Bureau of Substructures, Bureau of Highways, and from the Bureau of Sewers, connected with the Borough President's office in the borough in which the proposed construction is located. The location, character and dimensions of all such structures shall be accurately shown and indicated by figures. 5283

All details of existing structures shall be shown in black; all new construction within the lines of

5284 the streets shall be plainly shown in red, and sufficient distances and dimensions shall be given to locate the same definitely.

Sections, longitudinal and transverse, shall also be drawn upon the plan which will show the relative positions of the existing structures in the street and the new construction and the changes, if any, proposed to be made in the position of existing sewers, conduits or pipe lines, where such changes are caused by the construction of the new work.

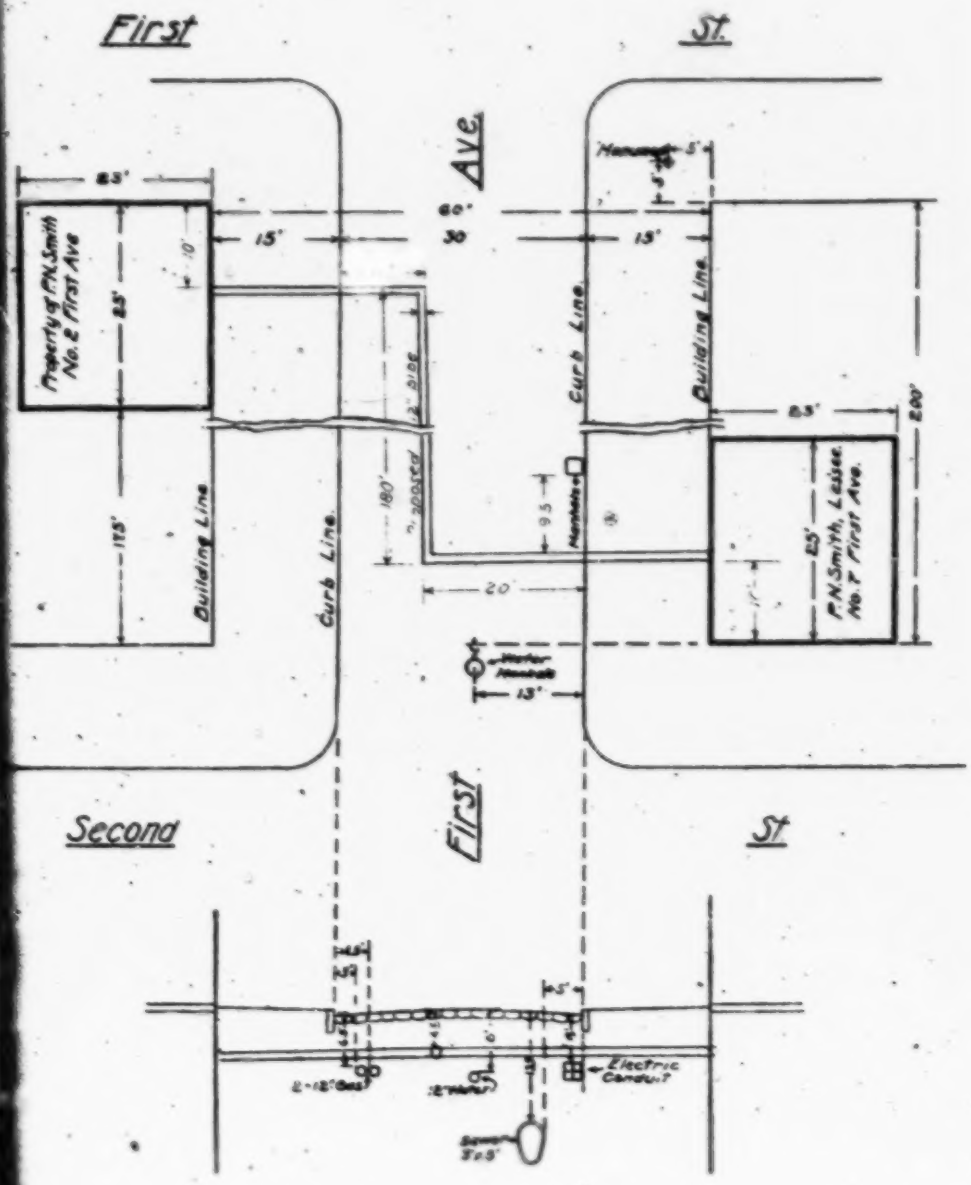
5285 The plan and sections shall also indicate in detail the method of construction and character of the materials to be used in the new work. All distances and dimensions shall be plainly indicated by figures, and any dimensions given in the application should agree with those marked upon the plan. The plan should bear the same signature as the petition.

There shall also be furnished for the use of the Board of Estimate and Apportionment, in addition to the tracing, 8 lithoprints on cloth and 16 on paper.

5286 All prints to be colored as the tracing.

A specimen plan and the proper title thereof are shown on the opposite page.

It is suggested that before the prints are made, the original tracing and a draft of the petition be submitted to the Division of Franchises for inspection.



Plan

showing location of

Proposed Pipe

to be constructed in

First Avenue

Borough of the Bronx

to accompany application dated Jan. 3, 1910, of

P. N. Smith,

to the

Board of Estimate and Apportionment

City of New York.

P. N. Smith
Applicant

Scale 1"= 10'

Note:- Proposed construction shown Red.

Cross section of Proposed Pipe.

2771 D

Specimen Plan Size of sheet 40 x 64

A rate of annual compensation for such privileges has been established by the Board of Estimate and Apportionment, which is shown by the following schedule:

For substructures and bridges.—Compensation to consist of a charge for the cubic space occupied, plus a percentage of the value of the area of the street occupied or covered.

The charge for the cubic space to be determined upon as follows:

	Per Linear Foot
Up to 1.4 square feet in cross-sectional area	$2.00
4 square feet in cross-sectional area	4.00
20 square feet in cross-sectional area	5.00
81 square feet in cross-sectional area	6.00
162 square feet in cross-sectional area	10.00
243 square feet in cross-sectional area	12.00

5288

Intermediate areas at a corresponding intermediate charge.

The above rates to apply for the first 100 feet in length of the structure. For greater lengths of a structure up to 1.4 square feet in cross-sectional area, the charge to be:

	Per Foot
For the next 50 feet	$1.90
For the next 50 feet	1.80
For the next 50 feet	1.70
For the next 50 feet	1.60
For the next 50 feet	1.50
For the next 50 feet	1.40
For the next 50 feet	1.30
For the next 75 feet	1.20
For the next 75 feet	1.10
For any greater length	1.00

5289

Larger structures to have a similar proportion-

5290 ate reduction in the charge for lengths greater than 100 feet.

To the amount determined as above must be added a percentage of the value of the area of the street occupied. Such percentage varies for the different type and use of structures as follows:

For pipes, conduits or tunnels used to contain pipes or electric conductors, 4 per cent.

For tunnels used to contain pipes or electric conductors and capable of being used as a passageway for employees or for transferring goods, 8

5291 per cent.

For tunnels used as public passageways or for the display of goods or for purposes other than above, 12 per cent."

For bridges, 8 to 12 per cent.

The minimum charge for all structures when the area of cross section is not more than 4 square feet to be $250 per annum in streets 25 feet or more in width.

The minimum charge for larger structures to be $500 per annum in streets 25 feet or more in width.

Structures to be used solely as fire escapes or structures petitioned for by public service corpora-

5292 tions to be used solely for the public convenience as a portion of a station or terminal, $100 per annum.

For surface railroad tracks.—For switching purposes only, no cars being allowed to stand on the track, 4 per cent. of the value of the area occupied, a width of 10 feet being estimated for a single track. For sidings on which cars are to stand to be loaded or unloaded, 8 per cent. of the value of the area occupied. The minimum charge for tracks, $500 per annum. When the track is to be used by a railroad corporation solely in connec-

tion with the operation of its railroad in order to afford access to a public passenger station or public freight yard, etc., $100 per annum.

For scales.—Eight per cent. of the value of the area of street occupied; minimum charge $250 per annum.

Consents for railroad tracks, as above, are at present governed by the case of Hatfield *v.* Straus (see 189 N. Y. Reports, 208).

Copies of similar applications and plans may be seen, and additional information will be given upon application, at the office of the Division of 5294
Franchises, Room 1307, Municipal Building, Centre and Chambers Streets.

Claimants' Exhibit "X"—Conveyance and Release, William and Margaret Volk to Manhattan Railway Co.

Whereas, William Volk acquired title to the premises hereinafter described by two several deeds, one dated October 24, 1923, and recorded in the office of the Register of the County of New York, on November 5, 1923, in Section 5, Liber 5295
3364 of Conveyances, page 354, and the other dated November 1, 1923, and recorded in the office of the Register of the County of New York on November 5, 1923, in Section 5 Liber 3370 of Conveyances, page 351, and has been ever since and now is seized and possessed of said premises in fee simple absolute; and

Whereas, said premises are bounded and described as follows: Beginning at the corner formed by the intersection of the southerly side of Forty-second Street, with the westerly side of Third Avenue and running thence westerly along the southerly side of Forty-second street one hun-

5296 dred feet; thence southerly parallel with Third Avenue ninety-eight feet and nine inches; thence easterly parallel with Forty-second street one hundred feet to the westerly side of Third Avenue and thence northerly along the westerly side of Third Avenue, ninety-eight feet and nine inches to the point or place of beginning, be the said several dimensions more or less; said premises being now known as No. 650 to 658 Third Avenue and 160 & 162 East Forty-second Street in the City and County of New York; and

5297 Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the streets adjacent thereto, as an open public streets and an interest or estate in the land forming the bed of the said streets; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part, and their lessee, the Interborough Rapid Transit Company, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one

5298 of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to, or may be held by, the said parties of the first part, or which may hereafter arise to the said parties of the first part or their grantees, by reason of the construction, maintenance and operation of a rebuilt station and new stairway and their appurtenances in connection with the said railroad adjacent to the said premises.

Now, therefore, this instrument, made this 17th day of December, 1924, between William Volk and Margaret Volk, his wife, residing at No. 40 Columbia Terrace, Weehawken, New Jersey, parties of the first part, and Manhattan Railway Company, of No. 165 Broadway, City of New York, party of the last part, a corporation duly organized and existing under the laws of the State of New York, Witnesseth, that for and in consideration of the sum of Two thousand five hundred ($2500) dollars, the receipt whereof is hereby acknowledged, the parties of the first part hereby grant and convey to the party of the last part, its successors and assigns, all the right, title and interest of the said parties of the first part in said Third Avenue and East Forty-second Street, and the land forming the bed thereof, and the easements therein appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of a rebuilt station and new station stairway, and their appurtenances as erected at present, as the same are hereinafter more particularly described, in connection with and forming part of the elevated railroad, in said streets, and the parties of the first part hereby authorize and consent to the maintenance and use of the said rebuilt station and new stairway, and their appurtenances, in connection with and forming part of said elevated railroad in the said streets by the party of the last part, its successors, assigns and lessees forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part, caused by said maintenance and use

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of said elevated railroad rebuilt station, stairway and their appurtenances, which are more particularly described as follows: viz: the said elevated railroad rebuilt station and stairway are described on Drawing No. 22941, entitled "Interborough Rapid Transit Co., Manhattan Railway Division, 3rd Ave. Line, proposed plan of station at 42nd St. account of removal of 42nd Street branch. Chief Engineer's office, N. Y. Aug. 22, 1923"

5303 And the said William Volk covenants with the party of the last part as follows:

First: That the said covenantor has good right to make this conveyance and release of the said property and has good right to convey the same.

Second: That the said property is free from encumbrances, except a certain mortgage given to secure the payment of the sum of $80,000, dated February 10, 1917, and recorded in Liber 3001 of Mortgages page 318, and outstanding leases.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals the day
5304 and year first above written.

William Volk L. S.
Margaretha Volk L. S.

Sealed and delivered
in presence of
R. M. Baldwin.

U. S. I. R. S. $2.50

State of New York, County of New York, ss.:

On this seventeenth day of February, one thousand nine hundred and twenty-five (1925), before me personally came William Volk and Margaretha

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Volk to me known, and known to me to be the individuals described in, and who executed the foregoing instrument and acknowledged to me that they executed the same for the purpose therein mentioned.

R. M. Baldwin, Notary Public, N. Y. County No. 35; N. Y. Register No. 5100.

Claimants' Exhibit "Y"—Conveyance and Release, Rosewin Realty Co. to Manhattan Railway Co.

5306

Whereas, Abraham B. Wolpin and Benjamin Rosenthal, under a lease from William Volk, dated August 4, 1921 and recorded in the office of the Register of the County of New York on September 3rd, 1921, in Liber 3237 of Conveyances, page 468, acquired a leasehold interest for a term of twelve years and eight months from September 1st, 1921, in certain premises hereinafter described; and

Whereas, by an instrument in writing dated November 17th, 1922, and recorded in the office of the Register of the County of New York, on June 2nd, 1923, in Liber 3348 of Conveyances, page 500, the said Abraham B. Wolpin and Benjamin Rosenthal duly assign said lease and leasehold interest to Rosewin Realty Corporation; and

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Whereas, the said premises are bounded and described as follows: Beginning at the corner formed by the intersection of the southerly side of Forty-second Street with the westerly side of Third Avenue and running thence westerly on Forty-second Street one hundred feet; thence southerly parallel with Third Avenue fifty feet; thence easterly parallel with Forty-second Street one hundred feet to Third Avenue and thence

5308 northerly along Third Avenue fifty feet to the point or place of beginning, be the said dimensions more or less; said premises being known as Nos. 654-658 Third Avenue and 160 and 162 East Forty-second Street, in the City and County of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

5309 Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part, and their lessee, the Interborough Rapid Transit Company, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said party of the first part,

5310 or which may hereafter arise to the said party of the first part or its grantees, by reason of the construction, maintenance and operation of a rebuilt station and new stairway and their appurtenances in connection with the said railroad adjacent to the said premises during the term of said lease and any renewals thereof.

Now, therefore, this instrument, made this 5th day of December, 1924, between Rosewin Realty Corporation, a corporation duly created and existing under the laws of the State of New York and having its principal place of business at No. 162 East Forty-second Street, in the Borough of

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Manhattan, in the City of New York, party of the first part, and Manhattan Railway Company, of No. 165 Broadway, City of New York, party of the last part, a corporation duly organized and existing under the laws of the State of New York, Witnesseth, that for and in consideration of the sum of Five Hundred ($500.) dollars, the receipt whereof is hereby acknowledged, the party of the first part for the sole purpose hereinafter set forth hereby grants and conveys to the party of the last part, its successors and assigns, all the right, title and interest of the said party of the first part, and 5312
all which it may or will acquire under the lease aforesaid, in said Third Avenue and East Forty-second Street, and the land forming the bed thereof, and the easements therein appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of a rebuilt station and new station stairway as at present constructed, and their appurtenances, as the same are hereinafter more particularly described, in connection with and forming part of the elevated railroad, in said streets, and the party of the first part hereby authorizes and consents to the 5313
maintenance and use of the said rebuilt station and new stairway, and their appurtenances, in connection with and forming part of said elevated railroad in the said streets by the party of the last part, its successors, assigns and lessees forever, without further compensation or further liability for any damages that may hereafter be sustained by the said leasehold premises or by the owner or occupant thereof, or by any person in privity of estate with the party of the first part, caused by said maintenance and use of said elevated railroad rebuilt station stairway and their appurte-

5314 nances, which are more particularly described as follows, viz: The said elevated railroad rebuilt station and stairway are described on Drawing No. 22941, entitled "Interborough Rapid Transit Co., Manhattan Railway Division, 3rd Ave. Line, proposed plan of station at 42nd St. account of removal of 42nd St. branch, Chief Engineer's office, N. Y. Aug. 22, 1923."

This instrument is to continue in force during the term of the aforesaid lease and any renewals thereof and of any lease or leases of said premises
5315 that may be substituted for said lease during its term or any part thereof.

And the said party of the first part covenants with the party of the last part as follows:

First: That the said covenantor has good right to make this conveyance and release of the said leasehold property and has good right to convey the same.

Second: That the said leasehold property is free from encumbrances.

In Witness Whereof the said Rosewin Realty Corporation has caused these presents to be signed
5316 by its President and caused its corporate seal to be affixed hereto this day of December, 1924.

Rosewin Realty Corporation, by Frederick L. Klein, President.

Attest: B. Rosenthal, Secretary.

U. S. I. R. S. 50c.

State of New York, County of New York, ss.:

On this 5th day of January, in the year one thousand nine hundred and twenty five (1925), before me personally came B. Rosenthal to me

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known, who, being by me duly sworn, did depose and say that he resides in New York City that he is the Secy and Treas of the Rosewin Realty Corporation the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order

John F. Doyle Notary Public N. Y. County No. 205 N. Y. Register No. 5187

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State of New York, County of New York, ss.:

On this 5th day of January, in the year one thousand nine hundred and twenty five (1925), before me personally came Frederick L. Klein to me known, who, being by me duly sworn, did depose and say that he resides in New York City that he is the President of the Rosewin Realty Corporation the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order

5319

Frederick L. Klein

John F. Doyle Notary Public N. Y. County No. 205 N. Y. Register No. 5187

State of New York, County of New York, ss.:

On this 5th day of January, in the year one thousand nine hundred and twenty five (1925),

5320 before me personally came Frederick L. Klein to me known, who, being by me duly sworn, did depose and say that he resides in City of New York; that he is the President of the Rosewin Realty Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of the said corporation, and that he signed his name thereto by like order.

5321 And the said Frederick L. Klein further said that he is acquainted with B. Rosenthal, and knows him to be the Secy & Treas of said corporation; that the signature of the said B. Rosenthal subscribed to the said instrument is the genuine handwriting of said B. Rosenthal, and was thereto subscribed by the like order of the said board of Directors, and in the presence of him the said Frederick L. Klein.

John F. Doyle Notary Public N. Y. County No. 205 N. Y. Register No. 5187

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Claimants' Exhibit "Y-1"—Extracts from the Minutes of the Proceedings Before the Public Service Commission on the "Application of Board of Estimate and Apportionment Relative to East 42nd Street Spur" (Case No. 2582).

(Of Claimants' Exhibit Y-1, pp. 1775 to 1777, 1784 to 1793 inc. of the record, being the testimony of Forest, of Bernstein, of Doino, of Schaeffer, of O'Connor and of Ryan, are printed at the request of the claimants and pages 1778 to 1783, 1793 to 1869 inc., of the record, being the testimony of McCue, of Brown, of Knox, of Meikleham, of Bernheim, of Bauer and of Schaeffer, are printed at the equest of the City.)

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State of New York, Public Service Commission, 1st District.

In the Matter of the proceeding to determine whether existing tracks, structure, station and appurtenances of the Manhattan Railway Company on 42nd Street in the City of New York are necessary and convenient for the public service or whether even if necessary and convenient such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street.

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New York City, March 21, 1921.

Met pursuant to notice in the Hearing Room, Public Service Commission, 1st District No. 49 Lafayette Street, New York City, at 10:30 o'clock a. m.

Before: Hon. Alfred M. Barrett, Commissioner, Public Service Commission, 1st District, And Hon.

5326 *Claimants' Exhibits.*

Charles V. Halley, Jr., Deputy Commissioner, Public Service Commission, 1st District.

Appearances: Terence Farley, Esq., Counsel for the Public Service Commission, 1st District, And H. M. Chamberlain, Esq., Assistant Counsel. John P. O'Brien, Esq., Corporation Counsel for The City of New York, by Mr. Devery, Assistant Corporation Counsel. J. O. Nichols, Esq., Counsel for the Manhattan Railway Company. Arthur G. Peacock, Esq., Counsel for the Interborough Rapid Transit Company. E. W. Forest, Esq., Representing the 42nd Street Property Owners & Merchants Association. Mr. Hobbs, Representing a minority of the shareholders of the Manhattan Railway Company and the Interborough Rapid Transit Company.

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E. W. FOREST, called as a witness in behalf of the applicant, being first duly sworn, testified as follows:

Direct examination by Mr. Devery:

5328 Q. Mr. Forest, you are the secretary of the 42nd Street Property Owners & Merchants Association? A. I am.

Q. And as such secretary did you procure to be signed a certain petition relative to the removal of the elevated spur on 42nd Street? A. I did.

Q. Have you that petition in your hands? A. Yes; this is a copy.

Q. Will you kindly read that. A. Yes. This is a petition circulated the latter part of September, addressed to the Honorable John F. Hylan, Mayor and Chairman of the Board of Estimate and Apportionment, City Hall, New York City, and reading as follows:

"The persons who sign this petition either reside or are engaged in business so located as to be affected by the existence of the elevated spur on 42nd Street between Third and Park Avenues. They desire hereby to emphasize their interest and determination that the spur shall be removed. It constitutes an obstruction to traffic, a hindrance to the proper development of 42nd Street east of Lexington Avenue, a disfigurement to the monumental and important buildings now erected or already projected for the Pershing Square District, and an encumbrance to the property on 42nd Street now owned by the City. With the 3rd Avenue elevated road and the East Side subway in operation, this spur is no longer a convenience to the travelling public and its continued operation is a burden to the operating company, and a positive menace to safety of the travelling public as stated by Police Commissioner Enright. These are among the reasons that emphasize the necessity for action that will result in its removal. Its elimination will relieve the street and allow the proper normal development to the East River on 42nd Street which has become the permanent great cross thoroughfare of Manhattan.

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"A special law has been enacted laying down a procedure whereby this unsightly structure may be removed. It was drafted by the then Corporation Counsel, Honorable William P. Burr, to meet the deficiencies of the prior act of 1917.

"If a reasonable agreement cannot be reached promptly with the Interborough Rapid Transit Company, the operator, and the Manhattan Railway Company, the owner, you are urged to secure prompt condemnation and removal of the structure."

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HON. MARTIN G. McCUE, called as a witness in behalf of the applicant, being first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. Mr. McCue, you are the Senator whose district comprises 42nd Street between 3rd and Park Avenue? A. Yes, sir.

Q. You are familiar with the spur there at 42nd Street? A. Yes, sir.

Q. Will you tell the Commission what you idea
5333 is with regard to the removal of that spur? A. My idea in regard to the removal of that spur prompted me to introduce the bill under the provisions of which this hearing is held. My idea of the thing is that it is a nuisance to the travelling public, a nuisance to the property owners and of no use to the 3rd Avenue Elevated Railway Company, especially now that it looks like a fairly good bet that the traction bill is going to be passed by the Assembly tomorrow. There is no good reason why the 3rd Avenue Elevated wants that spur any more, and the only contention they have made was in case the Interborough Rapid Transit went
5334 into bankruptcy and the 3rd Avenue Company's lines would be returned to them, that it would not be a feeder from the 3rd Avenue to the Grand Central.

Commissioner Barrett: And reduce the car mileage which the company is complaining so much about.

Senator McCue: And also reduce the operating costs.

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Claimants' Exhibits.

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STEWART BROWN, called as a witness in behalf of the applicant, being first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. Stewart Brown.

Q. Who do you represent, Mr. Brown? A. The United Realty Owners Association.

Q. How many of the property owners on 42nd Street belong to your association? A. A large number of department stores and hotels.

Q. What is your position in that association? 5336
A. President.

Q. And as President you have a right to voice their sentiments? A. I think I am voicing the sentiments of every real estate owner in the City of New York, to the extent that they will all receive a benefit if this spur is taken down.

Q. Well, what are your sentiments with regard to this matter? A. I am familiar with that section personally. I am repeatedly up in the subway to 42nd Street and repeatedly take the 3rd Avenue and go downtown or uptown. I would never dream for a moment of taking that spur but take the 3rd Avenue elevated. They say that 2,000 peo- 5337
ple use that spur during the day but I should doubt that, from the few people I see. That spur is closed early in the evening and it is not used to that extent I am sure.

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5338 *Claimants' Exhibits.*

WILLIAM E. KNOX, called as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. William E. Knox.

Q. Mr. Knox, you are President of the Bowery Savings Bank? A. Vice-President.

Q. You are putting up a new bank building at the corner of 42nd Street and Park Avenue, on the southeast corner? A. We are having plans drawn
5339 for a new building.

Q. It is your purpose to move your bank from the Bowery? A. No, it is our purpose to run both.

Q. Now, will you tell the Commission what you think about this spur. A. Yes; we think that the spur is a detriment to the whole street. We think that, as well as being a detriment to the looks of the street and an eye-sore, but for our depositors who will go there when the branch is opened, the street will be positively dangerous. We have thousands of accounts—old women and old men and children—everybody. We also think that the spur on the street will affect rental values of any stores
5340 that we may put in our building, which it is a possibility we may do. It affects the whole value of the property. We think the property would be worth more with the spur down. If there were no spur there I do not think anybody would advocate building a spur for the accommodation of the few people that use it.

By Commissioner Barrett:

Q. You realize that if the spur was removed that some of the damages would go upon the property you build on. A. We realize that, and if a fair

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damage is assessed we would not object. We would not like to be held up for an excessive damage, but if any actual damage was done I do not think there would be any disposition on the part of the company to object.

By Mr. Devery:

Q. How many depositors have you? A. About 160,000.

Q. How many do you expect at your new branch? A. Over 70 per cent. will go to 42nd Street. I use that spur. I live out of town and

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come into the Grand Central station and use the spur I think as much as any other one man in the City. If I do not happen to see the train up there I walk over to 3rd Avenue and make just as good time.

By Commissioner Barrett:

Q. You think that if the spur were removed the rental values on Third Avenue would increase? A. I do not believe so. I cannot conceive of anybody using the 3rd Avenue Railroad because that spur was there that would not use the elevated railroad without the spur.

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MR. MEIKLEHAM, appearing as a witness in behalf of the application, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. —. —. Meikleham.

Q. Your building is located on the corner of 42nd Street and Lexington Avenue? A. Yes.

Q. What is the assessed valuation of your property, do you know? A. The assessed valuation of

5344 the property is— You mean the land and the buildings?

Q. The land and buildings? A. $1,450,000, as I remember.

Q. You are aware that, as the owner of this property, you would be assessed for the cost of the removal of this spur? A. I believe so.

Q. And you are perfectly willing to pay your fair share of the cost? A. To a reasonable amount.

Q. Will you tell the Commission what your idea
5345 is of the value of the spur to the property and to the public? A. Well, we believe that the spur is obsolete, it is useless; it is a detriment to the street. My personal observation—my office is right facing the spur, and I see very little travel on it. I have never taken a count of it, but there seems to be very little travel and I feel that, since the subway has been built, the East Side subway, that what little use that spur might be to the 3d Avenue elevated is a good deal more than counter-balanced by the general value and use that that section could be put to. I think it would mean a development in that section which is now kept back by
5346 reason of a nuisance of that sort. The street is all blocked up and we seldom use it with our vans; we go down 41st Street.

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MATTHEW BERNHEIM, called as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. Matthew Bernheim.

Q. You are the owner of 156-8, 42nd Street? A. I am.

Q. How large a building is that? A. It is a three story building, 41.8 by 90. 5347

Q. What is the assessed valuation? A. $105,000.

Q. Where is that located—between Lexington and Park? A. Between Lexington and Third.

Q. Lexington and 3d, on the south side? A. The south side of the street. It is the original subway station of the Queens Borough subway.

Q. Will you tell the Commission what you think about this spur? A. I think the spur is a detriment to the property valuation. It is a nuisance and it interferes with traffic. I am also the tenant of 5348
138-140 East 42nd Street, where a large number of people patronize the store. My personal opinion is —I very frequently go on 3rd Avenue and I do not think taking the spur might save me a few steps but it would take longer. It is very much easier to walk across and from personal observation those who are using it, both my employees and customers, I find that they are not—I haven't heard of anyone who is in favor of it. It may have had some use some years ago but not since the subway is in existence, and it is certainly a detriment. The columns interfere with the traffic. When you 5349
go through there—I sometimes take a cab and the cabman has to slow up and wait for other traffic to pass, and it interferes. So I can see no reason why it should continue there. The few passengers that take it would take the 3d Avenue L just as well without it.

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MR. BERNSTEIN, appearing as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. Mr. Bernstein, you are connected with the Fifth Avenue Association? A. I am director of research of the 5th Avenue Association.

Q. The 5th Avenue Association represents property owners in this neighborhood? A. Well, my position in connection with this spur is that the
5351 board of directors of the association directed me to make an investigation of the traffic conditions, and I completed such an investigation last week. For two weeks we took observations and upon the strength of that observation I reported to the board of directors that the structural pillars interfere very strenuously with the traffic at 42nd Street. The pillars slow down the traffic on 42nd Street and cause great loss of time to everybody who goes through there, who has to travel himself or send his goods from the East Side to the West Side of 42nd Street. Upon that report the
5352 board of directors unanimously approved a request on the Board of Estimate and Apportionment to take the necessary steps to remove the spur.

Q. When was that resolution adopted? A. In 1920 on the 14th of November.

Q. How many members have you in your association? A. 1350.

Q. Of property owners on 5th Avenue? A. Not all; a large part of them. I could not tell you the exact number.

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By Commissioner Barrett:

Q. Why should the 5th Avenue Association be interested in the slowing up of traffic on 42nd Street? A. Because the traffic on 5th Avenue is very congested and the value of 5th Avenue as a business street depends greatly upon the facilities with which traffic can be handled. As long as the 5th Avenue traffic is held up by the west and east bound traffic the north and southbound traffic cannot move freely, and therefore any improvement in the east and westbound traffic improves the condition on 5th Avenue.

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By Commissioner Halley:

Q. It will increase the traffic on 42nd Street if you clear those columns away? A. But you increase the passage of the street.

By Mr. Devery:

Q. You think 41st Street is bearing more than its share of the traffic now? A. No, not under my investigation. You must remember there is no crosstown traffic on 43rd or 44th. It is on 45th Street, but there is absolutely no crosstown traffic between 42nd and 45th. On 42nd we will have to carry a great deal of traffic.

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Q. Where does the traffic go now that should go to 42nd? A. 45th. You cannot pass today there with two trucks; two trucks can hardly pass each other without danger.

Q. You say you made an investigation of two weeks? A. Yes.

Q. A personal investigation? A. Personal investigation.

Q. You took counts? A. Took counts and time. I have found that, for instance, the speed of the

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general traffic compared with the general traffic in Broadway and Madison, that the speed east of Madison Avenue, it takes about twice as long for a vehicle to get from Madison.

By Commissioner Halley:

Q. That is not the only factor, however? A. No, but it is one factor. You haven't the space and you have to move slowly..

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5357 ANTHONY DOINO, called as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. Anthony Doino.

Q. Mr. Doino, you are employed by the National Ice & Coal Company? A. Yes, sir.

Q. In what capacity? A. Driver.

Q. You are also foreman? A. Yes.

Q. You drive a truck yourself through 42nd Street very often? A. At times—most of the time.

5358 Q. What has been your experience in driving a truck, as to these elevated pillars? A. It is very dangerous. When you are turning a corner you generally hit the posts and you cannot back up, and when you get alongside a car you cannot pull out and it is dangerous to the passengers getting on the car.

Q. That causes you frequent delay? A. It is a cause of delay and it is dangerous to passengers..

Q. How many wagons do you have? A. We have different types. We have considerable.

Q. How many have you got in this district? A. 17.

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Q. That are in use every day? A. Every day.

Q. Have you had any accidents there through colliding with the elevated pillars? A. I have hit them considerable times by bumping up against them and causing the ice to fall off, which is dangerous.

Q. If an automobile is parked alongside the curb you have to take to the car tracks? A. Take to the car tracks?

Q. How long have you been driving a truck? A. Three years with this company.

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AMOS SCHAEFFER, called as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. Will you state your connection with the City? A. I am consulting engineer to the President of the Borough of Manhattan.

Q. Now, after the enactment of this act of 1919, what efforts did you make to arrive at an agreement with the company as to the removal of this spur? You were authorized by the Borough President to negotiate with the company? A. Yes.

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Q. What efforts did you make to negotiate with them? What steps did you take? Did you write to them and have conferences with them? A. The Board of Estimate and Apportionment, in December, 1919, authorized the Borough President under the act of 1919 to negotiate with the Manhattan Railway Company for reaching an agreement to remove the elevated structure. Perhaps the earlier history ought to be related in order to get the full reasons for the legislation of 1919.

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The act of 1917—I am a little bit hazy about it, but it is something to this effect it authorized the City and the Manhattan Railway Company to reach an agreement for the removal of the elevated structure. Under that agreement the Borough President wrote a letter to the Manhattan Railway Company in regard to the matter. The late President Shonts of the Interborough replied that he had taken this matter up with the Manhattan Railway Company and that under no circumstances would it consider the removal of the spur.

5363 *By Commissioner Halley:*

Q. That was when? A. That was in 1918 that is my recollection. That is, under the first act of 1917 that was done. There was nothing in that act enabling the City to continue the negotiation any further; that is, the City had no means of compelling any action, and the thing simply dropped there. Until the City received a reply it could not do anything further, and for that reason the act of 1919 was passed by the legislature to enable the City to continue these negotiations for some other method of removing the structure, pro-

5364 viding no agreement could be reached between the City and the railroad company. As already stated, the act provided that if no certificate had been issued by the 1st of October, and if no agreement could be reached, then the Board of Estimate & Apportionment by resolution should ask the Public Service Commission to hold hearings and to issue a certificate as to whether the structure were necessary, and even if it were necessary whether it would constitute an impediment to traffic. Then, acting under the resolution of the Board of Estimate and Apportionment of De-

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cember, 1920, the Borough President wrote the railway company for the purpose of taking up these negotiations for the purpose of reaching an agreement for the removal of the structure. A number of meetings were held and the company was asked to submit a figure for which it would remove the structure. The company was reluctant to do this and in fact never gave any figure for which it would remove the structure. It, however, submitted certain figures of original cost certain values of the easements which it had obtained, some of which it had paid for and some of which it had not paid for, that is light, air and access and the only figures we could get as to the value of the structure was what it would cost to reproduce the structure. The Borough President believed that, for the purpose of removing the structure, the value of the structure as it stands should be considered, and at any rate the Borough President felt that, so far as the figures should or could be determined which the Manhattan Railway was willing to accept for the removal of the structure were entirely too high for the City to consider; and the Borough President so reported to the Board of Estimate and Apportionment.

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New York City, March 23, 1921.

Met pursuant to adjournment in the Hearing Room, Public Service Commission, 1st District, No. 49 Lafayette Street, New York City, at 2:30 o'clock p. m.

Before Hon. Alfred M. Barrett, Commissioner, Public Service Commission, 1st District.

Appearances—Terence Farley, Esq., Counsel for the Public Service Commission, 1st District, and

5368 *Claimants' Exhibits.*

H. M. Chamberlain, Esq., Assistant Counsel. John P. O'Brien, Esq., Corporation Counsel for The City of New York, by Mr. Devery, Assistant Corporation Counsel. J. O. Nichols, Esq., Counsel for the Manhattan Railway Company; Arthur G. Peacock, Esq., Counsel for the Interborough Rapid Transit Company. E. W. Forrest, Esq., Secretary of the 42nd Street Property Owners & Merchants Association.

JOHN W. O'CONNOR, appearing as a witness in behalf of the applicant, having been first duly
5369 sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. John W. O'Connor.

Q. What is your position, Mr. O'Connor? A. Captain, Traffic Squad, New York Police Department.

Q. Mr. O'Connor, you are now acting head of the Traffic Division of the Police Department? A. I am.

Q. You are familiar with the traffic situation at 42nd Street, between Third Avenue and Grand
5370 Central Station? A. I am.

Q. Are you familiar with the elevated spur there? A. Yes.

Q. Do you know how it is constructed? A. Yes.

Q. That there are pillars down in the street? A. I do.

Q. Will you tell the Commission your opinion as to the nature and extent of these pillars—the nature and extent that they form an obstruction to the surface traffic in that street? A. Well, I believe that the traffic within that vicinity is becoming very acute, and that the elevated pillars form a serious obstruction to the traffic in those two blocks.

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JAMES E. L. RYAN, appearing as a witness in behalf of the applicant, having been first duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. What is your name? A. James E. L. Ryan.

Q. Mr. Ryan, what is your connection with the City? A. Engineer in charge of field forces.

Q. Of the Borough President's Office? A. Yes, sir.

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Q. By referring to this map, Mr. Ryan, will you tell me the width of 42nd Street? A. The width of 42nd Street is 59.9 feet.

Q. I am speaking now of the roadway? A. 42nd Street is 100 foot street, and the distance of the roadway, between curbs, is 59.9 feet, from Third Avenue over to a distance about 100 feet east of the east building line of Park Avenue, where it is decreased to 57.4 feet, due to a break in the alignment at the north curb.

Q. How many rows of elevated columns are there? A. Two rows of elevated columns in the street.

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Q. What is the location of the columns in relation to the curb lines? A. On both sides of the street the location of the columns, from base of column to curb is 7.1 feet.

Q. What is the distance between the pillars? A. 40½ feet.

Q. That is the entire distance? A. Inside to inside.

Q. The entire distance from curb at Park Avenue? A. That is at Lexington Avenue.

Q. Now, is the space between the pillars occupied by street railway tracks? A. There is a

double line of tracks, railway tracks between the "L" columns.

Q. How much was that distance, did you say, between the pillars? A. 40.5.

Q. How much of this space is taken up by the railway tracks from the outside rail to the outside rail? A. 14.83 feet.

Q. Allowing for the overhang of a car, what is the effective roadway width? A. The effective roadway width is 11 feet on the north side and it varies on the south side from 9.5 at Third Ave-
5375 nue to 11.2 west of Lexington Avenue.

Q. Is there room for more than one lane of traffic between the trolley car and the "L" pillars? A. There is not.

Q. What is the effective roadway width between the elevated pillars and the curb? A. Between the pillar and the curb it is a distance of 7.1.

Q. So there is no room for more than one lane of traffic there? A. There is not room for more than one lane of traffic there at all. In fact, big cars could not go in there.

Q. You mean, when there is a car parked at
5376 the curb there is no room for another vehicle? A. There is not.

Q. How many lanes of traffic do you ordinarily have on a hundred foot street? A. Three lanes of traffic.

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Q. Did you take a count of the vehicles at 42nd Street? A. Yes, sir.

Q. When did you take that count? A. On March 11, 1921 and March 19, 1921.

Q. At what points did you take it on 42nd? A. We took that between Third and Lexington Avenues of vehicles going in each direction, and

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between Lexington and Park Avenues of vehicles going in both directions.

Q. Have you tabulated that count? A. Yes, sir.

Q. Is this the tabulation (handing paper to witness)? A. It is.

Mr. Devery: I offer that in evidence.

(Paper referred to was received in evidence and marked Exhibit No. 6 of this date.)

Q. Between what hours did you take this count? A. Between the hours of 8 a. m. and 7 p. m.

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Q. You observed the traffic at how many points? A. At one point between Third Avenue and Lexington Avenue and one point between Lexington and Park Avenues.

Q. To the point between Lexington and Park Avenues? A. Yes, sir.

Q. What was the total number of vehicles passing? A. The total number of vehicles passing between those hours was 3,578.

Q. What was the average number per hour? A. The average number per hour was 325.

Q. What was the maximum in that period? A. The maximum in that period was 348 between 4 and 5 p. m.

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JOHN BAUER, a witness appearing in behalf of the Applicant, having been duly sworn, testified as follows:

Direct examination by Mr. Devery:

Q. Mr. Bauer, you are an expert statistician and accountant in the office of the Corporation Counsel? A. Appointed by the Corporation Counsel.

Q. Have you made an investigation at the request of the Corporation Counsel to ascertain the

5380 number of tickets sold at Grand Central shuttle station and on the elevated system at 42nd Street? A. Yes.

Q. How were those figures computed? A. They were obtained from the records of the Interborough Rapid Transit Company and checked off in part against the reports of the Interborough Rapid Transit Company to the Public Service Commission of the 1st District.

Q. For how many years did you get that? A. I have presented the figures here annually between
5381 the years 1900 and 1920, inclusive, and then, for the Grand Central station, exclusively, by five year periods, back to 1883.

Q. Is this the tabulation of those figures? A. Yes.

Mr. Devery: I offer that in evidence.

(The paper refered to was received in evidence and marked Exhibit No. 10 of this date.)

Q. Will you give a brief history, showing the change in the traffic on the 42nd Street spur, since 1880? A. In 1880 the number of tickets sold at
5382 the Grand Central station amounted to 645,895. There is then an increase to 2,052,317, in 1890. Then there is a decrease to 1,413,052 in 1900, reflecting, I suppose, the effect of the competition of the electrification of the surface lines with the elevated. Then, there is a rapid increase to 2,273,486 in 1904. That was the peak point reached during the entire history of the shuttle. At this time the subway was opened, and then there was a rapid decline in traffic and the total number of sales in 1906 was only 996,325. After that there was again a gradual increase, reaching a peak of 1,862,464 in 1918. Then, with the opening of the H-system,

there was again a decrease to 1,525,427 in the year 1920. This survey shows that the traffic fell off markedly with every introduction of new facilities handling the traffic—affecting the traffic—in the region of the Grand Central station; and chiefly after the introduction of the new facilities there was a gradual increase and accumulation of traffic afterwards. 5383

Q. How do the sales of tickets of the shuttle station compare with the sales of tickets on the Third Avenue line, as a whole?

Mr. Farley: What do you mean,—42nd and Third Avenue? 5384

Mr. Devery: No, I mean the Third Avenue line as a whole.

A. I made percentage comparisons between several years. I find that in 1900 and 1904, just before the original subway was opened, the Grand Central sales of the shuttle were approximately two per cent. of the Third Avenue line sales. Then, in 1920, this percentage—the Grand Central station traffic amounted to only one per cent. of the total Third Avenue, indicating that there was a relative decline of the shuttle traffic compared to the total traffic of the Third Avenue line. 5385

Q. What did you find the total sale of tickets were on the whole system in 1900? A. 184,-164,-110.

Q. I am speaking now of the Third Avenue line? A. Oh, for the Third Avenue line, the total sales were, 73,518,053, in 1900.

Q. They show a gradual increase, do they not, up to the year 1920? A. Well, there was a gradual increase until 1918. Then, there was a reduction the next year, and an increase in 1920 again. In 1920 the number was 145,160,315.

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Q. The sale of tickets on the Third Avenue line in 1920 being 145 million is twice as much as in 1900? A. Approximately.

Q. Whereas, on the shuttle, the sale of tickets in 1920—which, in round numbers is 1,500,000—is just about 100,000 over what it was in 1900? A. That is correct.

Q. Have you also made a study of the car miles operated on the 42nd Street spur? A. I have.

Q. Where did you get those figures? A. From the records of the Interborough Rapid Transit

5387 Company.

Q. Did the number of car miles operated fluctuate in the same degree as the ticket sales, following the introduction of the rapid transit facilities? A. No, they do not. They fluctuate, but not to the same degree. There is more of a tendency for the number of car miles in the spur to be the same, year after year, regardless of the amount of traffic.

Q. What is the number of car miles operated in 1883? A. 35,062.

Q. And in 1920, what was it? A. 80,393.

5388 Q. What was the number of car miles operated on the whole elevated system in 1883? A. 21,929,017.

Q. And in 1920? A. 74,434,271.

Q. So that, on the spur, the increase is from 35,000 to 80,000? A. Yes.

Q. A little over 100 per cent. and, on the elevated system as a whole, there is an increase from 21 million to 74 million, an increase of over 200 per cent.? A. That is correct.

Q. Is this the result of your tabulation of the car miles (handing paper to witness)? A. Yes.

Mr. Devery: I offer that in evidence.

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(The paper referred to was received in evidence and marked Exhibit No. 11 of this date.)

Q. Did you make any study as to the speed of operation on the 42nd Street spur as compared with the speed on the Third Avenue lines? A. I did.

Q. What did you find as to that? A. I found that, on the Third Avenue line as a whole, the average speed of the running of cars is about 15 miles an hour. This computation is based on the number of car miles operated and the number of car hours operated, as reported by the Interborough Rapid Transit Company to the Public Service Commission. I was unable to obtain, even from the Commission's records or from the records of the Interborough Rapid Transit Company the number of car hours operated on the 42nd Street spur, but I was able to get the number of car miles on the spur. In order, therefore, to find the speed on the spur, I had to make an observation of the actual running time, and I found, for the time that I personally observed, that the average was about seven minutes per round trip, from the Grand Central station to Third Avenue and back; and, in order to make allowance for any uncertainties, I took an average of six minutes, and computed the speed on that basis, and I found that, on the 42nd Street spur, the average speed is three miles per hour, as compared with 15 miles per hour on the Third Avenue line as a whole. Then, subsequently, I checked the average running time of a round trip, with reports that had been obtained by the Public Service Commission in the meanwhile and I found that six minutes per round trip, is approximately the running time.

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Q. What effect did this slow operation have on

5392 the operating expense? A. It would have the result of giving, for the spur operation, very decidedly a higher cost per car mile than on the Third Avenue as a whole, or for the elevated system as a whole. The expenses and taxes are usually computed on the basis of car miles, in terms of number of cents per car mile. Now, the much slower operation of the 42nd Street spur would naturally result in a much higher expense per car mile there than on the elevated system as a whole.

5393 Q. Did you tabulate the car mileage on the Third Avenue system, from 1916 to 1920—the annual car mileage and car hours? A. Yes.

Q. Is this it (handing paper to witness)? A. Yes.

Mr. Devery: I offer that in evidence.

(The paper referred to was received in evidence and marked Exhibit No. 12 of this date.)

Q. Now, what study have you made as to the operating costs on the 42nd Street shuttle as compared with the operation costs on the Third Avenue line? A. I first made a computation for the

5394 operating expenses and taxes per car mile, operated on the elevated system as a whole. These figures I took from the company's reports to the Public Service Commission. I presented the total figures for each year from 1916 to 1920, inclusive, and I gave the cents per car mile for each of the more important groups of operating expense; for example, maintenance of way and structures, maintenance of equipment, etc. The company does not keep its accounts by different lines. The expenses and taxes are shown simply for the elevated system as a whole. Consequently the only

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thing that can be done is to use those average figures and apply them to any particular line, with adjustment to the particular conditions on that line. So, I used the ratios of cost per car mile as shown in this statement for the system as a whole, and applied those ratios to the spur, after making adjustments for the much slower speed of operation on the spur.

Q. Well, applying these car rates, what did you find the operating cost, per mile, to be on the 42nd Street spur? Did you work that out? A. For the year 1920?

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Q. For the year 1920? A. For the year 1920 I found that the total operating expense and taxes per car mile for the entire elevated system was 21.24 cents. Now, making adjustments for the slower speed on the 42nd Street spur, I made two computations. In the first computation I allowed that the expense per car mile on the spur, would be four times as much as on the entire elevated system. I found that the speed, on the entire elevated system, was five times as high as on the shuttle; so, in this first computation, instead of using five, I used only four, and assumed that the operating expense and taxes per car mile on the spur were four times as high as on the elevated system.

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Q. You wanted to be liberal to the company? A. Yes, the idea was to be liberal; and I got then, for the year 1920, an average cost per car mile on the spur of 85 cents.

By Mr. Farley:

Q. How much? A. 85 cents.

By Mr. Devery:

Q. 85 cents? A. 85 cents per car mile on the

5398 spur as compared with 21.24 on the entire elevated system.

Q. 85 cents? A. Yes; 85 cents per car mile on the spur, as compared with 21.24 on the entire elevated system.

Q. That is four times? A. Four times.

By Commissioner Barrett:

Q. You also have the spur cost in that 21 cents, when you speak of the entire system? A. That would not affect the entire average.

5399 *By Mr. Devery:*

Q. You have tabulated those operating expenses and taxes, for the years 1916 to 1920? A. I did.

Q. On the system as a whole? A. Yes.

Q. And is this the result of that tabulation (handing witness a paper)? A. Yes.

Mr. Devery: I offer that in evidence.

(The paper referred to is received in evidence and marked Exhibit No. 13 of this date.)

Q. Now, I have a table here entitled, "Statement of Estimated Losses from the operation of the Elevated Spur on 42nd Street." Now, how did you compute those? A. I made two computations, because of the debatable character of some of the data that naturally gets into such estimates. In the first statement I first took the total number of tickets sold at the Grand Central station. Then I tabulated that number to give the total number of spur passengers a year. Then, I computed the total receipts from the spur passengers, by multiplying the total number simply by five. That gave me $152,543 for the year 1920 as the total revenues collected from passengers using the spur. On the

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basis of the postal card canvass, I then assumed that the spur passengers travelled three per cent. of their entire journeys on the spur, and 97 per cent. on the rest of the Third Avenue line.

Q. In other words, you took the percentages shown by this postal card canvass? A. Exactly; and applied the percentage to the apportionment of revenues, and in this way I assigned three per cent. of the total collections from the passengers that used the spur, to the spur. This gave me $4,576 for the year 1920. Then, I took the number of car miles operated on the spur, which were exact figures from the company's own reports. On line numbered six, I place the cost per car mile, as computed; and, as explained a few minutes ago, I have on line numbered 7, the total cost of operation, which amounted to $68,334, in the year 1920—the difference between the cost of $68,334 and the receipts apportioned to the spur, which was $63,758, which would indicate, on the basis explained, the loss resulting from the operation of the spur. That is, this would be the loss, after operating expenses and taxes, without any return on investment, had been deducted.

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Q. That is the net loss for the year 1920? A. The net loss for the year 1920.

Q. Now, you again wanted to be liberal with the company, and you made a second computation? A. I made a second computation for the purpose, I believe, of being extremely liberal. The fundamental data, as to the ticket sales and car miles, are the same in the second statement as in the first. In the second, however, I apportioned ten per cent. of the total receipts from passengers using the spur, instead of three per cent.—three per cent., you remember, was justified by the postal

5404 card canvass—but instead of three per cent. I took ten per cent. of the receipts and apportioned it to the spur. Then, as to the operating expenses, instead of adjusting all of the operating expenses and taxes to the slower speed on the spur, I took only the operation of cars—just the one group of operating expenses, of platform expenses—and multiplied those by four, although the speed is only one-fifth of the speed of the Third Avenue line as a whole.

5405 Q. Now, just explain why the speed of operation increases the platform costs? A. For example, at the time when I observed the time for round trips on the spur, I made inquiry as to the wages of motormen and conductors, and I was informed that on that road, the motormen get 86 cents an hour, and the conductors get 62 an hour. So that, between them, they receive $1.48 an hour. On the basis of only three car miles per hour, you had there, just for platform expense, of motormen and conductors, under these circumstances, 49 cents an hour. This has no regard for any other expenses—for ticket sales or station expenses,

5406 maintenance, power, or anything else. It is just simply on the basis of that slow speed of the platform expense for motormen and conductors, amounting to nearly 50 cents per car mile.

By Commissioner Barrett:

Q. You said the motorman told you he got 86 an hour? A. The motorman gets 86 cents, and the conductor 62 cents.

By Mr. Devery:

Q. This was the only item that you increased, then, in computing this? A. Yes. In the second

computation the only possible expense that is adjusted for the much slower speed on the spur, was the operation of cars; and I multiplied that cost by four, although the speed was only one-fifth of the Third Avenue, as a whole. For maintenance of way, structure, and maintenance of equipment, for power costs, for general expenses and taxes, I used the same costs as for the Third Avenue as a whole; although, of course, the slower speed has the effect throughout of increasing the cost per car mile. So I believe that, in the second computation I only erred in that I gave much 5408
more than would be reasonably justified; but, on that basis, I got $41,804 as the cost for 1920. Ten per cent. of the revenues amounted to $15,254, and this left the total amount on the spur operation amounting to $26,550.

Q. Well, of the two computations of loss, Mr. Bauer, one of $26,550 and one of $63,758—one of which is based on three per cent. and one on ten per cent., which, in your opinion, is nearly correct? A. I believe the largest is nearer correct. If I may say so, after going over all the figures, at a rough estimate I should say that $50,000 5409
loss in 1920 would probably hit it as nearly as you can determine a matter of that sort.

Q. If that $50,000 were added to the revenues of the Manhattan Railway Company, it would aid them considerably, would it not? A. To the extent of $50,000.

Q. Is this the result of your tabulation of that statement (handing paper to witness)? A. Yes.

Mr. Devery: I offer that in evidence.

(Paper referred to received in evidence and marked Exhibit No. 14 of this date.)

Mr. Devery: I think that is all.

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Cross examination by Mr. Nichols:

Q. Your method of determining the speed of the car on the shuttle, is to notice the time, catch it on the return trip—six minutes—and then divide the distance by that. Are the averages on any other car lines of any other railroad ever computed in that way? A. Well, the car miles are computed on the basis of actual runs sent in in regard to a particular line, and I made very careful inquiry as to the spur, and was unable to find any such records.

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Q. But you are estimating a speed of three miles an hour, which is the basis of your calculations of costs, as contrasted with a speed of 15 miles an hour on the elevated lines in general? A. That is correct.

Q. Now, a speed of 15 miles an hour—that is the speed which Mr. Turner, the engineer of the Transit Construction Commission, in his report last year, gets as the average speed of trains on the elevated line in the City of Brooklyn? A. I do not know what his figures were.

Q. Well, you get 15 miles, as the actual running

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speed of the ordinary train, and contrast that with the speed of a train at the end of its trip, when it stands still? A. Well, my observation has been that most of the time it is standing still.

Q. And you do not think there is anything unusual in working out a car mileage of three miles an hour? A. Not as I understand the computation for the Third Avenue system. As a rule, I believe, the standing-still time is included in the 15—

Q. You do not know? A. Why, yes; I think I—yes, I think I know.

Q. You mean to say that the actual running speed is only 15 miles? A. That was your testimony, and not mine.

Q. Well, you do not know whether that is correct. I have a report here— A. Mr. Turner's figures do not determine this thing.

Q. Mr. Turner is addressing himself to the same problem? A. But I have the exact figures as reported by the company to the Public Service Commission, and those figures include the time of trains from terminal to terminal and return, and include the stoppage at the stations, just exactly 5414 as I included the stoppage of the trains at the station at 42nd Street.

Q. But every spur and every shuttle is run at a loss, on that basis of computation, I presume? A. That, I would not state.

Q. I really do not understand why people put them on. Using your figures as a basis, you can figure out a loss after every shuttle station? A. I have computed—made estimates—for this shuttle for the hours indicated.

Q. And you attempted to solve this problem, as we have attempted to solve the problem, by 5415 finding out exactly how much it does cost? A. This is a computation to be supplemented by other data. The difficulty is that a larger proportion of the costs would never be determined. What I mean is, that a large proportion of the costs cannot be absolutely segregated for the spur, because they are joined in with the elevated system as a whole.

By Mr. Devery:

Q. This company does not make separate reports to the Commission in regard to the spur operation? A. No.

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By Mr. Nichols:

Q. There are ways of determination as to the probable cost and the probable profits involved, are there not? A. Yes, and the methods usually used are the methods I employ.

Q. You mean to say that such a method as that works out—that fantastic rate of three miles an hour would be employed by any practical railroad man? A. I imagine that if, at the present time, you proposed to erect that spur, that a practical raliroad man would use exactly those methods.

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Q. Well, you use the basis of the traffic on the ticket sales, don't you? A. Exactly.

Q. Now, do you suppose that that actually represents the actual traffic on this spur? A. It does, probably so closely that it can be used in our computation.

Q. Oh, you think the business men that have to run railroads would rest for a moment upon any such method as the computing of the ticket sales? A. They would be lucky to have such definite data.

Commissioner Barrett: In your mind the ques-

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tion of adequate service is to be determined by what your company thinks it should give.

Mr. Nichols: No, but the ticket sales are certainly not the basis to show the relative traffic. I am not advancing this argument for the purpose of reducing facilities but, in this case, of preserving them. Instead of tearing down facilities, where the greatest congestion in the world is, we are going to try to keep something there that will help solve that problem, and everything counts in such a situation. Now, you have heard testimony given here in behalf of the City, showing the traffic going from the station in certain hours,

of six thousand, as against the traffic going into the station of 4,800. 5419

Q. Now, who buys the tickets, the people who go out or the people that come in? A. The people who go into the station buy the tickets.

Q. Yes, and not the people that go out. You have there, on the basis of the testimony given this afternoon by the City, the people that go into the station are the ones who buy the tickets were a very considerable percentage less than those that went out. Did it ever occur to you, in your intensive study of the car mileage, why it was that so many people went west of that spur, greater than the number that go east? A. I think you are jumping too fast. I merely assumed necessarily an average throughout the year. I did not make any allowance for that, because there was not any basis for making such an allowance. The count for a single day may or may not establish the proper basis. 5420

Q. What would you expect, if I may ask you—why did you take the traffic figures according to those postal cards—I understood you to say that represents about four-fifths of the traffic on the "L"? A. Perhaps, as I remember the figures, but the figures speak for themselves. There were more from the north than from the south, substantially. 5421

Q. But you use the basis of six thousand, which was about the amount coming from the north? A. No, that was an average for all of them. As a matter of fact it is nearer two and a half per cent. than three per cent.

Mr. Devery: To avoid any uncertainty, there were 346 passengers that traveled north, and 982 south.

5422 Mr. Nichols: That is about the proportion I have in mind.

Q. And what was the distance that you used, you deduced, as the average ride on the elevated line of people coming from the spur that you say you got from the postal cards? A. I did not make the canvass; I took the results from Mr. Ryan, who testified in regard to this; and, on the basis of those figures, just about 2½ per cent. of the distance was on the spur and the rest on the Third Avenue line, and I rounded out the per cent. and allowed three
5423 per cent. for the spur and 97 per cent. for the Third Avenue.

Q. What is the length of the spur? A. It is reported by the company as 15/100ths of a mile.

Q. It is not 18/100ths? A. No; the running tracks is 15/100ths. Even if it were 18/100ths or 20/100ths, the difference would be negligible; and it is the same way in reference to these figures. All of these things make no considerable difference in the total results.

Q. So you regard as a negligible margin of error that 2½ per cent. does not make any difference as compared with three per cent. or 15/100ths as
5424 compared with 18/100ths? A. For this purpose that is correct. A practical man would not waste his time with any such consideration.

Q. Yet you, as presumably a practical man, took a postal card survey, which limited the traffic information to the indication of his home address? A. There might be a difference of opinion as to that among practical men.

Q. We are trying to determine just how practical we are? A. The assumption, in asking for the home address, was that the station shown on the elevated line could be more accurately determined that way than any other way.

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Q. Don't you know that a determination was had some little time ago? A. What?

Q. That 57 per cent. of the traffic came from the north and 43 from the south? A. I have been informed of that determination.

Q. And yet you took a determination of these postal cards on the basis of people who gave their home address, coming from the north most of them, that the traffic from the south, instead of being 40 per cent., was about one-fourth, instead of 43 and 57? A. Yes; but then again, as a practical man, if I took the ratios you are just mentioning, and made the computation accordingly, the results would not be materially different.

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Q. That is the difference in the ratio of one to four, and the practical results as you view them, there would be no difference between 971 and 380? A. Almost any such variations might result, but the percentage of the ride on the shuttle would at the most be four per cent. or five per cent., whereas on the Third Avenue line it would be 96 or 95 per cent. I simply submit, as a practical proposition, before a practical group of men, that it does not make any difference in such a calculation.

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Redirect examination by Mr. Devery:

Q. Have you not, as a matter of fact, allowed ten per cent.? A. In my second computation I allowed ten per cent., so far as the revenues are concerned.

Q. And in your first computation you allowed three per cent., and in the other computation you use ten per cent.; is that right? A. That is correct.

Recross examination by Mr. Nichols:

Q. Now, coming back to this postal card can-

5428 vass, by which you show the sale of the tickets and speak of the trains, from the basis of your calculations, did it occur to you that more than half of those people said they would not use the elevated at all if the spur were taken down? A. It also occurred to me that 90 per cent. of the people did not pay any attention to it.

Q. But you made this postal card canvass the basis of the calculations which you have given us? A. I do not believe I will quite admit that. It was explained as we went along just what part
5429 of the postal card canvass was used.

Q. Did it occur to you, when you found this postal card canvass gave this number of 400 from the north and 100 from the south, instead of showing 57 and 43 per cent. which has heretofore been regarded as the proper basis—did it occur to you to look up the matter in any way? A. I thought of that.

Q. Did you think of coming down to us and getting the result of some 3,000 postal cards? A. Postal cards from you?

Q. We do not give postal cards to people to take them home and take the further trouble of
5430 going to a post office box and mailing them back to us—? A. No, the conductors made them out for you.

Q. The conductors made out none of them. They are all signed and in the handwriting of the passengers themselves? A. Under instructions to the passengers. I personally observed, for the better part of an hour, the manner of filling out those cards.

Q. Then you might have asked what the result was?

Mr. Devery: Mr. Nichols may put the result in.

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Mr. Nichols: Yes, we will put the result in evidence.

A. I state, as a practical proposition, the division between north and southbound traffic, within the percentages that have been here discussed, or others that might have been reasonably brought in, do not materially affect the result of this computation. The data, of course, naturally, entering into this computation, cannot be determined so very accurately. That is the very reason for making the two computations, the first one following fairly closely certain data that have been established; the second going to what seemed to be a reasonably strict limit covering the operations on that spur.

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Q. You do not take into consideration, as a practical proposition, that if the spur were discontinued, however, all the traffic would be lost? A. I do not believe that there is any data here before the Commission that can show that that would be the case. On the contrary, if you take the number of people—if you take the number of postal cards that were sent out and take the number of cards of people who said they would discontinue using the spur, you would probably get pretty close to the percentage that we used in the first computation—namely, three per cent. I have not made that computation. Presumably any person who would be seriously inconvenienced would regret the fact that he would have to discontinue using the spur. The great bulk of the people made no reply at all, indicating that it does not make any difference. As I say, take the number of people who said they would discontinue using the spur, and applying that number to the 5,000 cards sent

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5434 out, you would get the percentage that comes pretty close to the one I used.

Q. I think you said, either as a statistician or as a practical man, that it does not make much difference, in this talk about tabulations, whether they come from the north or from the south? A. I don't think I said that.

Q. You did not say that? A. I don't think I did.

Q. What difference would it make? A. The record will show.

Q. What difference does it make? A. The dif-
5135 ference that it makes is that the southern passengers do not travel, on the average, nearly so far as the north going passengers; but any computation, if I use your figures—57 per cent. north and 43 per cent. south—the result still would be, at the most, that only five per cent. of the distance— using five per cent., I have not computed it accurately—you take no more than five per cent. on the spur; and five per cent., or three per cent., as I see it, as a practical man, that would not make any difference so far as the reasonable general conclusions are concerned. That is to say, the spur is
5436 operated at a large loss. Now, whether—of course, the exact amount cannot be determined, as my computation sets out as fully and as completely as can be—but the reasonable limits are in that, I think I have indicated fully.

Q. But the average distance of travel south of 42nd Street is two miles and the average distance north of 42nd Street is six miles. Does that indicate to your mind whether it is of importance to know whether the traffic goes south or goes north? A. It is of importance, except that the margins here we are talking about are of such character that this would not affect the results materially.

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You still would have a larger loss than I allowed by my second computation, when I allowed ten per cent. of the revenues to the spur.

Q. Then it does not make any difference? A. The most favorable assumption you can make for the spur shows a big loss. Whether you say it is ten per cent., which I took in one of my computations, or three per cent., which I took in the other one of my computations, or five per cent.—the figures you are talking about—you would still have a very large loss.

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Q. What is the distance you can afford to carry passengers on the elevated for five cents? A. It depends on how many passengers. It is a futile question to ask.

Q. Isn't there an average distance? A. Computations have been made of that sort, but there are no official records on that.

Q. If you knew that six miles was the length of probable transportation, and that a certain percentage of the people, by taking a spur, travelling north, there would not be any profit, it would break even? A. You are making such a vast number of assumptions. But you have not established that

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six miles is the limit of profitable carriage. It depends on the volume of traffic, and it may be more or less than that.

Q. So that the more traffic that is carried by existing facilities, the greater the margin of profit, as the density of traffic increases? A. What is that?

Q. The greater the proportion of profit—the greater the margin of profit as your density of traffic increases? A. That depends on circumstances too. That is another one of those questions—those assumptions—that cannot be answered.

5140 Q. Now, have you considered this fact; according to the figures this afternoon six thousand people go north do not buy tickets, and 4,800 people go south that do buy tickets? A. Considering that the condition which you have just mentioned is based on the individual count of a single day—that the tickets sales represents the actual count for an entire day's time—I do not believe that such a conclusion follows.

Q. Coming back to the significance of this traffic from the north. The great amount of traffic in the
5141 morning in the rush hour comes down there on that southbound platform which creates a standing invitation for people to use the shuttle; is not that the situation? A. As people come down Third Avenue and go there to the shuttle, the question is; does that constitute a standing invitation to use the shuttle?

Q. Yes? A. I should say, yes.

Q. And in the other direction, when they are going away from their work at night, and not under pressure to get to a certain place at a certain time, the traffic along that spur is very much less? A. I
5142 do not know whether it is or not.

Q. That is the first thing that occurred to me—to have an actual count. A. But with a matter of that kind, the count of a single day may or may not show the facts. Even assuming that what you say is correct—assuming the accuracy of that—I do not, but suppose we do—and then adjust the first and second computation in full proportion, and you still show a large loss on the spur. Again, the margins here are so wide, that any one of these factors which you have mentioned, will not change the results any.

Q. You tabulated the ticket sales? A. That is what I did.

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Q. Would you be surprised to know that, as the result of actual count, corroborating the testimony given this afternoon by the City's witness that the actual number on that spur was some 296 per cent. of the tickets sold at that station, instead of being 200 per cent? A. How is that?

Q. Would you think that is correct or not? A. I am sorry, but I did not get your question.

Q. (Question above recorded repeatedly by the stenographer.) It is only three times as much? A. The actual traffic is nearly three times.

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Q. Yes? A. I would be surprised to find that it was, but if I were to adjust my computations on that basis, it would still show large losses on the spur. That is what you come to in every one of those things.

Q. Now, have you looked up any other aspect of this traffic problem at 42nd Street except this question of whether the Interborough would lose or not—lose money in the operation of this spur? A. That is a pretty broad question.

Q. I know; but that is all you have testified to, as to whether or not we would lose money, or would not lose money? A. I was connected with the Commission a number of years and made traffic studies all that time, and I have been interested in the traffic around 42nd Street, and I have studied this particular problem now offered from the standpoint we have presented.

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Q. That is, the standpoint of cost? A. The standpoint of cost and volume of traffic at the present time on the 42nd Street spur.

Q. The volume you have only taken from figures given you? A. As explained in my testimony this afternoon.

Q. Now, if it is true that at least 25 per cent.

5446 more passengers travel west on that spur because it is more convenient to step across the platform, or for some other reason, you consider that a spur that provides any function in making it possible to deflect traffic from the subway to the elevated railroad—the fact of its convenience—the psychological suggestion of the existence of an elevated railroad—is that to your mind a factor? A. A factor in what?

Q. In taking people from the overcrowded subway to the elevated railroad? A. The presence of
5447 the spur, you mean?

Q. Yes, the presence of the spur? A. Oh, it might be a factor, but anything might be a factor. It is a question of how much of a factor it is. I don't know; do you?

Q. I am asking you? A. I don't know, nor do you.

Q. Now, do you know that, while the traffic at 42nd Street station in the last five years has increased 114 million—? A. What is that?

Q. 114 million in the last five years and that the traffic on the elevated lines, the Third Avenue ele-
5448 vated, is less than it was five years ago—would you consider that a statement in line with the knowledge you have obtained in your office with regard to these transit questions? A. Yes, I have been aware that there has been an increase in traffic going through the Grand Central station. I have not computed its volume, and have not compared it for the present year with five years ago.

Q. Would you be surprised to know that the traffic in the Grand Central station—? A. You mean the subway?

Q. No, just that one station—? A. You are asking too much. I have not looked up those figures.

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Q. Do I expect too much that, with regard to this question of taking care of the tremendous increase of traffic at 42nd Street, we should look to the future and consider the relation of the elevated railroad and these spur facilities—is it asking too much to consider that phase of the problem? A. No, but all of those things are to be considered in relation to one another. I have not had a chance to compute the volume of traffic through the Grand Central.

Q. Can you tell me, in respect to any one of the transit facilities on 42nd Street, what has been the increase during the last year? A. I have not made the computation.

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Q. Would it surprise you to know that the increase has been over 22 per cent.? A. Through the Grand Central?

Q. No, all the stations on 42nd Street? A. Excluding the Grand Central?

Q. Including the Grand Central?

Mr. Devery: I think Mr. Nichols ought to take the stand.

Commissioner Barrett: The witness does not have to answer him if he does not know.

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Mr. Nichols: The witness apparently has not taken into consideration the traffic problem there at 42nd Street.

Q. Now, it has greatly increased, at any rate? A. That has been my impression. I haven't the figures before me, but, generally speaking, I believe that there has been an increase but, in spite of that, the spur has diminished for the last three years.

Q. You know that is because the Lexington Avenue subway has been built? A. Is that so?

Q. You said so? A. No, I did not.

5452 Q. I said presumably? A. Well, I will stand by the record. Go back to the record, if you want.

Q. Now, you also have observed that in three years the traffic on that spur increased 54 per cent.? A. Increased?

Q. Increased, yes? A. During the last three years?

Q. Take the years from 1901 to 1904, for instance? A. That is different.

Q. Did that suggest to your mind that there is a possibility—a high degree of probability—that
5453 there is going to be an increase in the amount of people using that spur? A. No, sir; it does not.

Q. Why do you think that the people going to 42nd Street are going to go—what else are they going to use? A. Prior to 1904 there wasn't another rapid transit connection between the Grand Central station and the lower end of Manhattan. At the present time there are various choices that can be exercised. I would be very greatly surprised if, during the next five years, there should be any such increase, anywhere near such an increase on the traffic of the spur as took
5454 place between 1900 and 1904. Of course, anything is possible.

Q. That traffic on the spur, of course, is only the traffic on the elevated lines? A. Yes.

Q. And you are aware that, in the last five years, the elevated railway lines have been very greatly improved in their facilities—the Third Avenue running the complete length of Manhattan, and that many improvements have been made which now permit of a very great increase in service; you know that, don't you? A. Yes.

Mr. Devery: It is also to be noted that the traffic increased from 1916 to 1920, according to

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your tabulation, 148 million in 1916 and 145 million in 1920.

Mr. Nichols: Exactly, just as it decreased in the period before that to which I have called attention. The traffic on the elevated lines actually went down during the ten-year period preceding 1901; then it shot up over 50 per cent. in three years.

Q. Now, how long do you think the computation of the subways is going to keep up. Is there much more room in the subways? A. There seems to be.

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Q. That is your observation as a practical man, in the rush hours? A. As a practical man, during the rush hours I have been surprised—

Q. Now, subways cannot be built in less than five years? A. There is a new Commission coming in and you cannot tell.

Q. Can anybody build them in five years. It was nine years between the building of the first subway and the building of the second one? A. What is that?

Q. I say it was nine years between the building of the first subway and the building of the second one. A. I do not recall definitely; it may have been.

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Commissioner Barrett: So that there may not be any confusion about it, I might say that the Commission as now constructed does not build subways.

Q. Now, Mr. Bauer, do you think that subways can be erected at 42nd Street or anywhere else within the next five years? A. No.

Q. You say no? A. Under what conditions?

Q. Any reasonable, practical conditions—we will use the word practical? A. I should say it is fairly

5458 within reason to expect that a subway line could be put through in five years.

Q. That might be, but do you consider it reasonable to expect it is going to happen in five years? A. I cannot foretell the political tangles that are likely to arise in five years.

Q. I do not refer to political tangles; I am referring to physical conditions? A. I should think that if practical men—you and I and a few engineers—would turn loose on this job, we could get subways through in five years.

5459 Q. And provide the money? A. Yes; of course, that is important.

Q. Is it a fair statement that the subway system at 42nd Street has already reached the point of saturation? A. Not with the Interborough management.

Q. I mean as a physical fact, because it is a serious fact—isn't it? A. I should not be prepared to say that it has. I cannot speak as an expert on that, for the simple reason that I have not studied that angle of it carefully enough. My general impressions are that there is great crowding there, and all of that; and yet if you throw this

5460 entire additional traffic—this entire spur traffic—on the subways, and it were divided, as it probably would be, between the east side and west side and scatter it over the day—it naturally would divide itself in that manner, so it probably would not too seriously burden the subway traffic further than it is already burdened. Of course, that is a hasty assumption. Remove that spur and probably—my guess would be that certainly not over 10 per cent., if 5 per cent., would be thrown on the subway—that the great bulk would continue riding on the Third Avenue Line.

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Q. The postal cards, on which you base your assumption—? A. That certainly showed that the great majority did not care anything about it and that they would continue there on the Third Avenue.

Q. And you relied upon that postal card count for the computations which you made? A. No, what I relied upon was the relative distance in the route, and in regard to that there is a greater probability that out of the 444 replies you would get some sort of a picture as to the distance of the route, but when you want to find out as to the

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number of people who would quit using the spur, then if you don't hear from 90 per cent. of the people, I submit that the situation is very, very different. In the first case, the data is more or less reliable, and in the second case it is not at all.

Q. Do you know that about 50 per cent. are using the spur—50 per cent. more than used it eight years ago? A. No, I do not.

Q. These figures that you have for eight years ago—well, seven years—1913, it is 1,053,000, and now it is 1,525,000? A. That is correct.

Q. A 50 per cent. increase on that spur in seven years? A. I see.

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Mr. Devery: You also know there are 900,000 less than in 1904.

Q. Yes. Did you know we used to have a through operation of that spur to Grand Central—of trains through? A. I have been informed that was so.

Q. Do you know the date it was discontinued? A. No, I do not.

Q. Do you know we used to have a connection into Grand Central station from the spur station? A. Perhaps so; I really do not know.

5464 Q. Now, those facts have some relation to these changes in the traffic shown? A. Yes, there might be a relation.

Q. That where you take out a connection with the Grand Central station that was relatively more important then than now might make a difference. But the layout being taken out—do you know about that? A. No.

Q. So there has been very considerable fluctuation in the traffic on that spur? A. Substantial ones.

5465 Q. It was below a million in 1906, when the subway cut into it, and when the second subway was built it is 1,525,000? A. That is right.

Q. So that it stood the competition of the second subway far better than it did the first? A. That seems to be so.

Q. Now, if it is true that in the next five years there will be no further building of subways, and there is an enormous increase in traffic at 42nd Street, do you not expect a proportion of that to go to the elevated lines? A. It depends on what you mean by "great." I should expect some increase in the spur.

5466 Q. Do you not think that, with the present overcrowding of all the facilities in 42nd Street, with the exception of the Second and Third Avenue lines, that the people will have to go to the elevated railroad? A. You are making a big assumption.

Q. This transportation has made the 42nd Street district the great district it is? A. For a comparatively short time there has been a rapid increase in traffic, and the year 1920 was a remarkable traffic year. Now, traffic has not been increasing during this past year in any such ratio, and there is no basis for expecting the 1920 increase right along.

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Redirect examination by Mr. Devery:

Q. Now, Mr. Bauer, taking the 56 per cent. of those people using the shuttle, between 7 and 10 o'clock, according to the figures introduced here, or 3,000 in round numbers,—suppose those 3,000 people who use the spur those three hours in the morning from 7 to 10 A. M., were transferred over to the subways, would it have any appreciable effect on the congestion in the subway? A. Of course, I have not made a precise study of the subway congestion at 42nd Street during those hours on the west side line; but simply as a general 5468
proposition why, of course, it would not be, relatively speaking but a drop in the ocean of traffic at that point, into the streams of traffic. It would add to the congestion, of course.

Q. But it would not do so appreciably? A. It would not.

Q. Supposing the spur on 42nd Street were removed, you do not believe the half of traffic would discontinue the use of the elevated line? A. No, I should not think so.

Q. They would walk to the elevated, just as they do at other stations? A. My judgment would be 5469
that the great bulk, certainly 90 per cent. or more of the passengers would continue to use the elevated, though we haven't any precise data to show that.

AMOS SCHAEFFER, a witness appearing in behalf of the Applicant, having been previously sworn in this proceeding, recalled for further direct examination, testified as follows:

Direct examination (Resumed) by Mr. Devery:

Q. Mr. Schaefer, you were here the other day, when Mr. Nichols insinuated that this movement

5470 was not a movement in behalf of the city but on behalf of the property owners? A. Yes, sir.

Q. Now, is that a fact, Mr. Schaefer? Isn't this proposition a city improvement? A. It is a city improvement.

Q. What is the necessity for the improvement? A. The necessity for the improvement is to open 42nd Street for traffic to Park Avenue, to make it more available for traffic.

Q. It is an improvement that has been under consideration by the Borough President for a long
5471 time, has it not? A. Yes.

Q. And the Borough President was responsible for the introduction of the first bill to provide for the elimination of the spur on 42nd Street? A. That is my recollection.

Q. The act of 1917? A. Yes.

Q. He is also responsible for the second bill, the Act of 1919? A. I so believe, yes.

Q. He has made every possible effort that he could to accomplish the removal of this spur, by agreement or otherwise? A. Yes.

Q. You consider that these elevated pillars on
5472 42nd Street are an obstruction and a detriment to the surface of the street? A. They are a great obstruction.

Q. And it is in the line of improvement for the city to remove them? A. Yes.

Q. The city is now widening the roadway west of Madison Avenue, is it not? A. The city has under contemplation now the widening of the roadway between Madison Avenue and Park Avenue on the south side.

Q. That will increase the traffic east of Madison Avenue? A. That will facilitate traffic east of Madison Avenue.

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Q. The vehicular traffic? A. The vehicular traffic.

Q. And it is absolutely necessary to widen the roadway at 42nd Street? A. It was so considered a good many years ago, but the way did not seem to be open until now to carry out the physical widening. The resolution of the Board of Estimate and Apportionment to make a widening was adopted in 1912. It was believed at that time it was necessary to widen it.

Q. If these elevated obstructions are removed east of Park Avenue, will not a lot of the traffic go east on 42nd, and go up and down on the other streets? A. It would, but I doubt that alone would invite a large majority of the traffic further east. More than that is necessary, and Lexington Avenue already has been widened from 42nd Street to 51st and Madison Avenue will be widened this coming summer. Now, along these lines, I listened to the testimony given today, and the questions asked, and I do not think it is a fact that there is any dead line as to traffic to the east. I think there is considerable evidence which will show that is not so. For example, when the Grand Central improvements were made under the Act of 1903 and 1905 and Depew Place was acquired by the New York Central—the City held the fee title at that time—it was thought that there would never be any need of having Depew Place as a thoroughfare.

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Mr. Devery: That is all.

New York City, March 30, 1921.

Met pursuant to adjournment in the Hearing Room, Public Service Commission, 1st District, No.

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49 Lafayette Street, New York City, at 2:30 o'clock p. m.

Before: Hon. Alfred M. Barrett, Commissioner, Public Service Commission, 1st District.

Appearances: Terence Farley, Esq., Counsel for the Public Service Commission, 1st District, and H. M. Chamberlain, Esq., Assistant Counsel. John P. O'Brien, Esq., Corporation Counsel for the City of New York, by Mr. Devery, Assistant Corporation Counsel. J. O. Nichols, Esq., Counsel for the Manhattan Railway Company. Arthur G. Peacock, Esq., Counsel for the Interborough Rapid Transit Company. E. W. Forrest, Esq., Secretary of the 42nd Street Property Owners & Merchants Association.

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JOHN BAUER, a witness appearing in behalf of the Applicant, having been previously sworn in this proceeding, further testified as follows:

Redirect examination by Mr. Devery:

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Q. Mr. Bauer, have you made a further examination of the records of the Public Service Commission to ascertain the sale of tickets on the 42nd Street, 34th Street, 23rd Street and 14th Street stations for the last five years? A. Yes.

Q. You have the sales on the 42nd Street station? A. Yes.

Q. How have they increased in that period, or have they increased? A. The elevated ticket sales on the elevated stations at 42nd and Third Avenue have increased between 1915 and 1920 approximately one million.

Q. What were they in 1916? A. In 1916 they were, for the total traffic, north and south, 2,303,728, and 1920, the fiscal year, 3,339,140.

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Q. An increase of over a million? A. A little over a million.

Q. During that same period the sales on the shuttle station did not increase at all? A. They were practically stationary in 1916. On the shuttle the total was 1,537,904 and in 1920 they were 1,524,427.

Q. How did the ticket sales on the Third Avenue station at 42nd Street compare with the ticket sales at 34th Street, 23rd Street and 14th Street? A. I have on this tabulation before me only the 14th Street, and I find that, on the 14th Street elevated 5480
station, the total sales in 1916 was 3,896,562, in 1920, 3,877,005. That means that they were practically stationary—no change. For 23rd Street, from a separate memorandum, I find the total sales in 1916 were 4,443,495.

Q. What station is that? A. That is the Elevated station at 23rd Street and Third Avenue. In 1916, they were 4,443,495; in 1920, 5,076,154, an increase of 600,000 in round numbers. On 34th Street, I have just run down and gotten the figures, but I haven't them added, but, generally speaking, the same situation prevails, that practically there 5481
has been no change in the number of sales between 1920 and 1916. The general point is that on 14th Street, 23rd Street and 34th Street, on the Third Avenue line there has been practically no increase in the number of ticket sales between 1916 and 1920. There was some increase on 23rd Street during that time, whereas, on the 42nd Street, there was a substantial increase—a million, and that took place at Third Avenue while the shuttle traffic remained practically stationary.

Q. Are the physical conditions in 14th Street the same or similar, to a great extent, as they are

5482 on 42nd Street? A. As to the relative layout between the Third Avenue elevated and the subway, running north and south, and the character of the stations yes. The only difference is there is not a shuttle elevated spur at 14th Street, and of course the character of the neighborhood has been changed. 42nd Street has been growing and developing, and I assume 14th Street has not been changing as rapidly.

Q. Assuming that at 14th and 42nd the elevated and the subways are competing for the business?

5483 A. Yes.

Q. The distance between the stations are about the same? A. Yes.

Q. Regardless of the fact that the conditions are the same, 42nd has increased a million and 14th Street has remained stationary? A. That is correct.

Q. What is the general conclusion you draw from that? A. The general conclusion seems to be that the Third Avenue station at 42nd Street has been getting the due proportional benefit of the 42nd Street district, without regard to the elevated spur. The traffic on the spur has remained

5484 stationary during that period. The general section has developed. The ticket sales on the elevated at 42nd and Third Avenue have increased by one million—that is, roughly, by 50 per cent. That would indicate that the elevated at 42nd Street has gotten its due proportion of the development of that region, without getting any assistance, during that period, from the shuttle.

Recross, examination by Mr. Nichols:

Q. Were you here when the testimony was given, showing that the actual traffic on the 42nd Street

spur was 298 per cent. of that indicated by the sale of the tickets? A. Will you repeat that?

Q. I say, were you here when the testimony was given, showing that the actual traffic on the 42nd Street spur was 298 per cent. of that indicated by the sale of tickets—approximately three times the sale of tickets—at the spur station? A. No, I did not hear that.

Q. Do you desire to challenge that statement? A. I do not believe I said that.

Q. I want to know if you do now? A. I do not believe I have any ground for challenging or accepting that. That is your testimony, and I am not here to challenge it. 5486

Q. You knew that we had reported, as a result of actual count, a year ago, the number of passengers in connection with this 42nd Street spur problem, that the east traffic on the spur was 15 per cent. greater than the number of tickets sold, did you not? A. The eastbound traffic?

Q. The eastbound traffic on the spur is 15 per cent. greater than the traffic shown by the tickets sold? A. You reported that to whom?

Q. Didn't you know that? A. I am trying to get your question. 5437

Mr. Devery: You mean the westbound?

Mr. Nichols: No, I mean the eastbound.

A. I really did not get the full purport of your question.

Q. Well, you came down to see our people about these traffic statistics a little while ago? A. Exactly.

Q. You had with you a letter containing a statement prepared by the Interborough Rapid Transit Company, showing that the eastbound traffic was 15 per cent. greater than the number of tickets

5488 sold? A. Yes, I had a letter, and I have that in my possession now—

Q. What is that letter? A. —which made a computation of the east going traffic on the spur as being 15 per cent. greater than the number of ticket sales. Now, since you raise the question, I think I ought to be permitted to explain all I got from your office in that connection.

Q. You can do that on redirect examination. I just want to bring out the point that you knew that? A. I knew that, and I also challenged the

5489 correctness of that. I made inquiry at your office what the significance of these figures were, and the explanation was what I supposed it was, and I got admissions from the men with me that probably the statement was incorrect.

Q. You got a statement from whom? A. From Mr. Bruce.

Q. And Mr. Bruce said he thought that that was incorrect? A. That the conclusion that these figures were intended to convey was probably incorrect.

Q. What conclusion? A. That the eastbound

5490 traffic was 15 per cent. greater than the number of ticket sales at the Grand Central station.

Q. Didn't you say at that same time you thought the spur ought to be retained, in view of the showing you got? A. I do not recall any such statement.

Q. You did not make that statement to Mr. Bruce? A. I do not recall that I did.

Q. Now, did you know that your own count, made by the City, showed an excess of westbound traffic of six thousand as against 4,811, an excess of eastbound over westbound? A. Whatever those figures were, I haven't them in mind.

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Q. Did you also know that a year ago we reported to the Borough President, the results of a careful investigation of the comparison of the north and southbound traffic—43 per cent. as against 57? A. I do not remember definitely the occasion of how those figures were used. I have seen such figures coming from your office, that there was such a division; just what the occasion was I do not recall definitely.

Q. And you knew that a year ago we had made a careful count showing an excess of 15 per cent. in the eastbound traffic over the ticket sales. You know that? A. No, I do not.

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By Mr. Devery:

Q. You knew he said he had? A. I knew what that letter stated, and I am also prepared to explain, as I understand that letter, and I am also prepared to say that Mr. Bruce's opinion agreed with mine as to the meaning of that letter—that the conclusion was erroneous.

By Mr. Nichols:

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Q. That was the letter—is 15 per cent. right? A. That is the question.

Q. Do you know whether that is right or not—can be computed with absolute accuracy by counting the actual tickets in the box and comparing with the tickets sold? A. If you take a long enough period of time to do it, I think that would test it. I would not agree that a day or two or three days' count would show it. If you take a long enough time, I would say yes.

Q. How many actual days was this comparison based on? A. I haven't any idea.

Q. You assume it is incorrect without knowing

whether it was one day or 20 days? A. I assumed it, after talking with your own men about it, and when they agreed with my own view of it. I tried sincerely to find out how it was computed. The letter does not explain how the 15 per cent. was derived and I tried to find out what it meant, and I had preliminary ideas as to what it probably meant. Your men agreed with those ideas, that they were probably correct, and they agreed with me that the conclusion the letter meant to draw was probably erroneous.

5495 Q. If there is any man who agrees with your idea, I wish you would state who it is? A. The man I was talking to directly was Mr. Bruce.

Q. Do you want to implicate anybody else by agreeing with you? A. You mean relating to the question as to the amount of those figures?

Q. Yes. A. There was another man there with Mr. Bruce.

Q. Will you inform me who he is? A. I do not know.

Q. You based your entire calculations upon the supposed loss to the Interborough Rapid Transit
5496 Company involving an operation of that spur, on the basis of the tickets actually sold, and did not try to find any of the real facts in the case at all, is that the idea?

Mr. Devery: I object to that question.

A. I do not think that is true, no.

Mr. Devery: We have been trying to find all the facts in the case.

The Witness: I certainly have. I explained in full detail, and then some, what that calculation was and the assumptions carried out.

By Mr. Nichols:

Q. I do not care anything about your calcula-

tion. What I do care about is the inaccuracy or accuracy upon which the basis was made. The basis is the ticket sales? A. The basis is the ticket sales.

Q. And if the ticket sales did not show the traffic, your whole conclusions are worthless? A. I think you are in error as to that.

Q. You do not think 50 per cent. difference? A. You have not established, in the first palce, a 50 per cent. difference and, considering the wide margins in these computations, even allowing the 50 per cent. difference and a lot of other things, it 5498
would still show that the spur is operated at a deep loss.

Q. That is it; 50 per cent. does not make any difference to you? A. It does not in these figures. Get somebody who can figure, and you will find that is so. The table stands by itself and your assumptions can be carried through the table.

Q. I am only getting at the basis of accuracy—something by which you can measure whether you relied upon facts or not? A. I have taken the facts that could be most definitely ascertained, without relying upon the haphazard counts that might re- 5499
act one way or the other as to the kind of day that would be chosen for the count. As to those definite facts you can make wide, very wide further assumptions, but you cannot get away from the final fact that the spur is operated at a large loss.

Q. You have said it depends upon what day it is taken? A. What days of the week.

Q. What days of the week do you consider fair, and how many days? If it is going to take a month, for us to try to find out, let us do it under the direction of the Public Service Commission and find out the facts? A. It has not been my

5500 problem to determine just what days should be selected, but it is perfectly clear that a count on any one day might miss the facts.

Q. The Commission has an ample force, and it is very easy to count the cancelled tickets in the box during the day, and we can find out about this 14 per cent. plus, as it was found, and see how much truth there is in the statement? A. You mean try to establish how that 15 per cent. was determined?

Q. Let me state— A. I am perfectly willing to
5501 find out about that.

Q. It is in evidence, in the record today? A. That 15 per cent., of the explanation is anything different from what I was able to get from your office—

Q. It is a statement of fact, that we actually counted the number of people, and that was the statement contained in those letters of April last that you saw, and it was the same count which determined the relative proportion of the north and south traffic which you said the other day you knew. That is a statement of definite fact. It was
5502 further testified to today that, on that method of determining the number of tickets in the box, the number cancelled were actually counted and the number of tickets sold was known; and the difference between the two was some 14 plus per cent.? A. Then I shall simply state here that the explanation—I shall qualify that—the explanation as to the probable meaning of that 15 per cent. that I was able to get from Mr. Bruce was different from that. Now, he was speculating as I was, as to what the 15 per cent. meant. It was not explained in your letter; it was not clear at all.

Q. Now, perhaps, after all, we are not going to

quarrel about a question of fact, because the letter merely stated a question of fact, and also gave the total amount of passengers upon which that fact was based. You simply question some deductions made from it? A. I did not question the fact, but I usually want to know how the fact was determined.

Q. Now, I have told you that the fact was determined first, by an actual count made of the passengers and then by a comparison of the tickets sold? A. My reply is that, from a considerable period of time—take a reasonable period of time and proper days are selected, with the difference that you indicate, if there would then be established a difference of 15 per cent., then that would probably indicate fairly that the traffic was larger than the ticket sales. But one day's count would raise the presumption that there might be such and such a condition existing as of that day, and I do not think it would prove it.

Q. Well, the statement has been made it was determined on account of two days of actual passengers? A. Two days would be better than one, but it would not be conclusive, and if you add the 15 per cent. to my computation—

Q. I do not care anything about your computation whatever. I want to get at the fact as to whether you question the accuracy of our statements and the determination as to the actual number of people using our spur? A. I do not have to pass on the validity of your proof, and as far as I am concerned, if these counts were accurately and actually made, two days' count would be better than one and would raise a better presumption than one day; but I would not admit at all that they prove the matter finally nor actually.

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5506 *Claimants' Exhibits.*

Q. You based another one of the bases of your determination, as to the supposed loss in the operation of the spur, on the number of people who travel north as against the people who travel south. Now, you determined that with a postal card canvass, gotten out on a single day, of which, out of 5,000 cards issued, 440 were received.

Mr. Devery: No, it was held on three days.

Mr. Nichols: I understood they were given out on one day. That was sufficient for you to determine that important fact, as to the number of peo-

5507 ple using our spur.

A. Well, that was what was used. I think it was not sufficient. Now, let us get at the facts. It was not sufficient; I wished to have more; but then, at the same time, it was indicative, as a single figure it was usable. But again, go back to my statement, which I have repeated again and again and will continue to do so as long as you continue with this futile line, allow all these margins, and it does not make any difference; you still show a large loss for the spur. The reason I presented two computations, with such tremendously different results,

5508 was to allow for the uncertainty of these factors; and in the second computation I went to the limit of allowing and minimizing the charges against the spur, and then even there I showed a loss of $20,000.

Q. Facts did not make much difference to you, whether it was 97 per cent. distance travelled on the Third Avenue as against three, or 10 per cent.? A. It is so futile and utterly foolish as a question—

Q. You think the facts are futile and foolish, and you do not regard them? A. The facts and points that you have been arguing from, are.

Mr. Devery: I think we are wasting a lot of

time. Mr. Bauer has stated just how he made his computations. He allowed for mistakes and inaccuracies.

Commissioner Barrett: I know it, but he is his witness, though.

By Mr. Nichols:

Q. The sole point I want to find out is if you want to revise your conclusions, in view of the more accurate facts which we are presenting? A. I will be very glad, with the consent of Assistant Corporation Counsel, to take my statements of last 5510
time and revise them from the standpoint of every extreme assumption that you have been making. You are working here with assumptions, with partial facts and assumptions. I will be willing to use every one of them and work out a statement, but my belief now is it will show a large loss for the spur.

Q. Mr. Bauer, we are not working on assumptions? A. Sure you are. You are working on assumptions when you make a two-day count or a one-day count to take the percentages that you get and apply them to a year's operations—when you 5511
do anything like that you are certainly working with assumptions. Now, then, I am willing to take any of the assumptions you have put forth here and work out a statement, and it will show a loss.

Commissioner Barrett: Now, we have gotten this far with that. I think, if you have nothing more on that particular question—

Mr. Nichols: No, I have nothing more.

By Mr. Devery:

Q. This letter that Mr. Nichols refers to, what letter was that? A. I have a copy of it here.

5512 Mr. Nichols: I would suggest, Mr. Commissioner, that it seems to be rather an important determination as to how many people use this spur; and if there is any question as to the accuracy or self-sufficiency of our count to give a close approximation of the development, we will be very glad to have the Commission make an independent count to establish this fact. We think we have approximated the facts very closely by our methods.

Mr. Devery: We would like to have the Commission make a count too.

5513 Commissioner Barrett: The fact of the matter is that we have made a count, but the figures are not compiled as yet; but the count has been made. Immediately after the last hearing I instructed to have a count made, and at the proper time we will bring in those figures.

By Mr. Nichols:

Q. Now, going into the question about the traffic at 14th Street, and so on. You know that the Lexington Avenue subway was opened on August 17, 1918? A. Yes, about that time.

5514 Q. And has a station right there next to our spur station in 42nd Street? A. Yes, about that.

Q. It is right there, isn't it? A. Yes.

Q. So that there is a new and very close competition with the Third Avenue line established by the opening of that new subway?

Commissioner Halley: Which furnishes an additional reason for the removal of the spur.

Mr. Nichols: If the traffic now was known to the Commissioner to be 50 per cent. more than it was before that spur was built only eight years ago, I do not think it does show a reason why the spur should be removed. People from the

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Bronx who use this facility coming from the north, as most of them do—poor people, five-cent fare people—not the automobile people, like Mr. Bowman and his associates.

Commissioner Halley: It is not necessary to characterize this proceeding. This is a proceeding brought for the purpose of a judicial finding, and you are lawyer enough to know that you are not going to make out a case by making characterizations of that sort.

Mr. Nichols: I am not making any characterizations, but if you are going to judge the case before it is finished—

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Commissioner Halley: Indeed we are not, but we want a lawyer appearing before us to conduct matters as he should. There is no use bringing in these references to hotel interests, large or small. Of course, they are interested, naturally, they have property rights. Proceed.

By Mr. Nichols:

Q. Now, Mr. Bauer, you know this traffic has greatly increased from a few years preceding the opening of the subway, do you not? A. The traffic on the spur station?

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Q. On the spur station? A. It has increased since the opening of the Lexington Avenue subway?

Q. No, since the time before that; that it is larger now than before the subway was opened? A. Oh, no, I do not know that.

Mr. Devery: The figures show just the opposite.

The Witness: The figures on the spur, just prior to the opening of the Lexington Avenue subway, were 1,862,464. This past year, 1920, they were only 1,525,427.

5518 Q. Let us look a little further? A. In 1920 they were about the same as 1916, if you go back far enough. Just after the opening of the original subway, two years after, traffic fell down one million.

Q. And it kept down until 1912, when it reached its minimum. The effect of the original subway lasted eight years and cut the traffic in half? A. It never did catch up the original traffic.

Q. Didn't it cut down the traffic one-half the original subway? A. Yes.

5519 Q. And then it increased 80 per cent. very rapidly? A. No, not rapidly; it increased 80 per cent. over a period of years.

Q. So, after the original subway was opened, you find a period of recuperation? A. Over a period of 12 years.

Mr. Devery: Now, that is his answer. If you want to testify, take the stand.

By Mr. Nichols:

Q. What years? A. The low point is in 1906 and the high point is in 1918.

5520 Q. Your figures are by fiscal years? A. Exactly, yes.

Q. The figures I have are by calendar years and are brought so much nearer to date? A. Oh, well, that difference is the difference between tweedle-de-dee and tweedle-de-dum.

Q. It is? A. Yes.

Q. But that would show that the traffic on the spur had already begun to rebound from its low level after the second subway, the Lexington Avenue subway, had been opened for two years; if that is so, wouldn't that indicate that the trend had just started upwards another 80 per cent.? A. Yes, but you haven't any figures to show that.

I have here the figures for the Grand Central station, for the six months ending December 31, 1920, and the sales for these six months totaled 769,588, which is approximately at the same rate of sales as during the preceding fiscal year. 5521

Q. Approximately it is larger? A. It is not.

Q. Approximately is it larger or not, yes or no? A. It is not larger.

Q. Larger than the preceding six months? A. But my answer is perfectly clear. The sales during the last six months ending December 31, 1920, were not larger at the rate of the preceding fiscal year—n-o-t. 5522

Q. I am asking whether it was larger than the corresponding six months of the preceding year? A. Well, that I haven't here.

Q. Well, I have the figures of the last calendar year? A. Then you have the preceding six months for the corresponding six of the preceding year.

Q. I have them for the year? A. All right; that does not give you the comparison of the figures for the six months ending December 31, 1920, with the corresponding six months of the year before. If you have those figures you begin to show something; if you haven't, you don't. 5523

Q. Do you think it does not show anything if the figures for the complete calendar year of 1919 show a number of 1,504,000, while in this last year, the calendar year of 1920, it shows 1,537,500, showing that the corner had been turned. Have you any idea as to what the traffic is going to be in the next five years? A. No, and you haven't either. Anything you say, or anyone says, as to that is a guess at this time.

Q. You do not judge the future by the past? A. Oh, more or less the future depends on the past.

5524 Q. Now, what is the past of elevated lines—elevated traffic at this spur station and elevated lines generally? Is it not a fact that, with the electrifying of the surface lines, it was at a standstill for years until that competition was exhausted? A. Until what is exhausted?

Q. The competition of electrifying the surface lines. Do you know anything about that? A. I presented some figures myself in regard to that factor, but whether the competition is exhausted or not I do not know. I cannot say as to that, but

5525 I presented figures myself that showed the fluctuation of the traffic at that spur, and remarked about the probable cause.

Q. Just confine yourself to my question? A. That is a pretty difficult thing to do.

Q. After the electrification was completed of the surface lines, do you know that there was an increase on the elevated line of approximately 60 per cent. in three years; yes or no? A. Well, that could be determined.

Q. Or 54 per cent. on this spur, as testified to by you yesterday. That is the first element of serious

5526 [redacted]?

Mr. Devery: Increase in what?

Mr. Nichols: Increase of traffic on the elevated lines. It has happened before and we believe it is going to happen again.

Mr. Devery: Following the electrification of the street surface lines?

Mr. Nichols: Following the electrification of the street surface lines. That was the first serious cause of competition with the elevated lines. There was an actual decrease in a period of ten years, during which that competition was being carried on and the lines one after another, being electri-

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fied, a very extraordinary thing in view of the great increase in general traffic throughout the city.

Mr. Devery: I don't see what that has to do with the 42nd Street Spur.

By Mr. Nichols:

Q. You are arguing that there is no need of this spur in the future? A. That is not any argument. What is the use of that sort of thing?

Q. You are an expert on what, Mr. Bauer? Do you know anything about traffic? Is that what you are testifying about?

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By Mr. Devery:

Q. Tell him what you know about traffic? A. Oh, Mr. Corporation Counsel, I cannot tell him what I know about the traffic.

Q. Tell him the many years you have been studying traffic conditions in New York City. And you have not confined your studies to the elevated lines?

By Mr. Nichols:

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Q. And you don't think it is at all interesting, in view of the situation that exists at 42nd Street—interesting and significant—to look at the history of what has happened with regard to elevated traffic on this spur? A. Who said anything of that sort?

Q. I want to know whether you consider that important or not? A. Of course it may be.

Q. Let us consider it then. Let us start with the constitution that was first effective in respect to the elevated railroad, this electrification of the surface lines. Do you know anything about that? A. Now, so far as I have the figures here, in 1890 the traffic on the spur went up to over two mil-

5530 lion—2,052,317. That is the calendar year. Then, according to the figures that I possess here, the traffic went down to 1,413,052 in 1900. It may be that there was a lower year than that. I haven't the figures in between.

Q. I have all the figures here? A. Then may I ask you whether there was a lower year than 1900?

Q. Not at that time; not until after the subway was opened? A. Consequently, so far as the competition of the new electric surface lines were concerned, the low point on the Grand Central spur

5531 was reached in 1900—that is, according to the figures I have here.

Q. The figures I have here show that is practically so? A. Then we are agreed that the effect of the electrification of the surface lines was perhaps working in with a number of other factors that we are not prepared here to discuss this afternoon, because we do not know them; but undoubtedly, as the effect of that competition, there was that gradual decrease in traffic from 1890 to 1900. Then, from 1900—

Q. Decrease of 200,000? A. 2,052,319. 1891 and

5532 1892 may have been still larger.

Q. Then it fell off to about 1,400,000? A. Yes, about that. Then, after that it increased very rapidly and in 1904 it reached 2,273,486. Now, there were two factors there. One of them was undoubtedly the wearing away of this competition, of the new electrified surface lines with the elevated; the other one was the electrification of the elevated itself, which provided a new and much superior facility, which worked to take away traffic from the surface lines. Then, of course, thereafter there came along a still superior facility, the new subway, and then all of these

gains of a few years, were lost, and a still larger sum was lost. 5533

Q. Now, going back to where I started from, trying to bring out the first competition from the electrification of the surface railroads, that brought down the traffic some 600,000 or 700,000, was that right—about one-third? A. Yes, over a period of years, and apparently the competition worked this way: that the traffic on the spur continued to go down right along, that is it did not work itself out. The competition did not complete itself in one, two, or three years; the traffic continued to decline on 5534
the spur, apparently, from these figures, until the electrification of the elevated lines took place. Now, may I apply that to the present situation?

Q. Wait a moment. I am trying to ask you some questions? A. That, sometimes, is not noticeable.

Q. Not if you talk all the time and do not respond to my questions. I am going to ask you if you know of any other reason, except the electrification of the surface lines, why, during that period of decreasing traffic on the spur—whether you know of any other cause than the one I have 5535
stated to be the one? A. No, I do not; but I have not made any intensive study of that entire period, as to what factors may have come in there. My guess would be that that is the chief factor, but there may have been other important factors that would have to be gone into if we are going to analyze this thing. That is probably the important factor.

Q. And you have not analyzed it, and you do not consider it significant, as to what is to be the future use of the spur? A. I do not think anybody ever understood that; certainly I did not. I have said

5536 that I have not analyzed the other factors that may have come in, that I want to analyze very carefully and draw a reasonable conclusion.

Q. Then the traffic went up again before the subway was opened to the highest point that it ever reached; is that true? A. That is correct.

Q. And that increase was, from whatever reason it may have been, very rapid? A. It was very rapid.

Q. Then there came the next competition with the subway through the opening of the original 5537 subway in October 27, 1904, and following that there was a long period of decline, was there not? I see you refer to it as a long period. A. Of decline.

Q. Yes. A. Well, no, there was a very rapid decline, and then there were several years afterwards, without any noticeable significant increase in traffic. That is, the minimum was reached in 1906, slightly under a million.

Q. What was your figure for the fiscal year 1906? A. 996,325, or practically one million. Now, the figures continue fairly close to that point. They 5538 went up to 1,214,000 in 1910, but went back to—well, in 1913 they were only 1,053,740; so the real increase did not begin until after 1913.

Q. All right. Then we are agreed that after this second source of competition and decline, there was another serious decline, in this case cutting the traffic in two and lasting in its effects for quite a number of years? A. Ten years, as it works from figures I have; that is, the losses sustained continue practically for ten years, and after ten years there began to be a fairly rapid increase again in the spur sales.

Q. I do not want to get into a discussion of par-

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ticular years, because my figures are for calendar years and yours are for fiscal years? A. It is roughly a ten-year period.

Q. According to mine, it is a seven-year period and according to yours it seems to be a ten-year period. What are your figures for 1904? A. 2,273,486, dropping to 1,500,000 the next year, the minimum in 1906. Then that minimum was practically held until the close of 1913 and then after that there is a fairly rapid increase.

Q. I just asked you for one year. What was your figure for 1912, for instance? A. 1,059,957.

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Q. And what was your figure for the following year? A. 1,053,740.

Q. That was 1913? A. Correct.

Q. And for 1914? A. 1,281,111.

Q. So there is where the rise began? A. Yes, the rise began there.

Q. Which was nine years? A. Nine years—well, it was for 1904, when the subway went in, to 1914, when the increase began—nine to ten years.

Q. And then, when the Lexington Avenue subway was opened on August 17, 1918, the last year, your fiscal year, before the third source of competition came in, would be 1917. What is the traffic count? A. 1,862,464.

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Q. An increase of over 80 per cent. in that period following 1913; that is four or five years? A. Yes, that is true; an increase of 80 per cent. took place during that period.

Q. In three or four years? A. Yes, sir.

Q. Following the opening—? A. No.

Q. No, preceding the opening of the Lexington Avenue subway? A. That is correct.

Q. Now comes along the third source of competition, the Lexington Avenue subway, opened

5542 August 17, 1918, and there has been a decrease, due to that, of about 320,000 or 350,000? A. About that.

Q. Now, we come down to the point where we have reached the turning point and started on one of those rapid increases again. What do you think about that? A. Why, using the earlier experience, it would seem not. That is to say, after the original subway, it took nine to ten years before the upward trend started, and the traffic began to increase to a considerable extent on that spur. If
5543 we use that as a basis of comparison, we would still have about seven years to go before we could expect anything like a rapid increase.

Q. Now, if it should appear that that increase has already started in, that before the present calendar year, 1920, the traffic had already begun to increase and did increase over the traffic of the year preceding, would you conclude that the corner had been turned and another period of rapid increase had started in? A. Oh, no. Really, you cannot use the increase of a short period and lead to any such monumental conclusion. There are fluctuations. Now, going back to the earlier pe-
5544 riod. You find that in 1910 the traffic went up to 2,214,000, and dropped back to 2,060,000, and continued on that basis for several years. There are minor fluctuations, due to minor causes that you cannot determine. A six months' period does not show anything of that sort.

Q. Did you ever study a chart showing the trend upward and every decrease; have you ever done that? A. Yes, I have that memorandum of yours you are referring to.

Q. Would it interest you to know that every one of the elevated lines had a decrease, due to

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the panic in 1907 and the year's depression that followed? A. Yes, but the ticket sales here at Grand Central station did not show any such fluctuation for 1907 and 1908. Then, in 1910, there was a temporary high point reached and again a decline until after 1913. So you see that does not—

Q. But in 1910 and 1911, for the Third, Sixth and Second Avenues, all of them stopped going up? A. But we are talking here about the Grand Central station and what happened there.

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Q. I know, but if there was no rapid transit change in 1910, and if you find, in a chart based upon actual figures—? A. In 1910?

Q. Yes. A. No, curiously enough, 1910 was the biggest figure on the spur.

Q. But you are running by fiscal years and my figures here are calendar years, so we might differ? A. But either direction from that point, excluding my fiscal year of 1910, which was a temporary high point, those figures ran just about even for three years in either way. So that as to these figures, your tabulations and mine cannot vary greatly; so that the result of all of that is, if you are going

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to use the experience subsequent to the opening of the old subway as indicating what is going to happen now, it would look as if we would have probably a period of six, seven or eight years at the Grand Central, before the traffic would begin again significantly to increase. That is what those figures show, if you make that comparison.

Q. So you mean that you would expect from—? A. Oh, no, I am not saying that. I have said several times that those factors I have not studied sufficiently to furnish a satisfactory conclusion my-

self; but if you take that historical comparison you mentioned, the conclusion is there.

Mr. Nichols: I do not want to go into this at too great length, if you will just confine yourself to specific replies.

Commissioner Barrett: There has been a lot of speech-making here. Try to answer yes or no as near as you can.

Mr. Nichols: That is what I would like.

Q. Then, Mr. Bauer, do you see in anything that you have gathered as to the increases that have
5519 followed the working out of your computations in the past, that the elevated line—do you see any reason why there should not be a similar increase of traffic at the present time now on the elevated line? A. On that spur?

Q. Yes. A. From the figures I have gathered I see no reason to expect any considerable increase in traffic on that spur for seven years to come.

Q. Several years? A. Just about six or seven.

Q. Do you know that the traffic in the 42nd Street district is increasing with very great rapidity and volume at the present time? A. At what point, the elevated or the subway?

5520 Q. At all points? A. The statement I present here—

Q. I said at all points and I asked you whether it was increasing greatly at the present time. That calls merely for yes or no? A. The information I have here does not indicate it.

Q. You say no? That is right? A. Well—

Mr. Nichols: That is all. I do not want to ask any more questions.

Redirect examination by Mr. Devery:

Q. You were going to tell us about that letter

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Mr. Nichols referred to as showing at least a 15 per cent. greater traffic than was indicated by the ticket sales? A. Yes.

Q. What letter is that? A. It is a letter of May 10, 1920 to Hon. Henry R. Curran, President of the Borough of Manhattan, from the President of the Manhattan Railway Company, Alfred Skitt.

Q. That is a statement made by the company? A. Yes.

Q. You did not investigate as to the truth of the statement? A. No, I did not check the figures. I tried to get an explanation of some of the state-

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ments made.

Q. What was the explanation given you?

Mr. Nichols: I do not see any use of going into these explanations. I merely brought out here as to whether he knew, as a fact, the statement had been made and whether or not he had taken the trouble to investigate it since.

By Commissioner Barrett:

Q. You took that letter to the Interborough, as I understand it? A. I did.

Q. And you wanted an explanation of the figures? A. Yes.

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Q. Did they give you an explanation of the figures? A. Some explanation.

Q. Tell us what they said?

By Mr. Devery:

Q. Give us your best recollection of it. A. It is somewhat difficult, right off, to go into the thing.

By Commissioner Barrett:

Q. That is all right. You called upon them and you showed them the letter? A. I did.

Q. And they said something to you? A. Yes.

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Q. What did they say? A. I am trying to recall now, so as to give a clear explanation.

By Mr. Devery:

Q. Possibly it might aid to recall what Mr. Bruce said? A. I have the general situation in mind but these figures are technical things and it takes time to piece out in your mind just how they run into each other. I would prefer, if I could, to have a few minutes to think it over.

By Mr. Nichols:

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Q. You stated, didn't you, that Mr. Bruce agreed with your explanation. Did you know what your explanation was when you made that statement under oath? A. He agreed with the assumption.

Q. That you made as to the inaccuracy— A. As to the inaccuracy of this conclusion. Yes, that is correct.

Q. You said that about Mr. Bruce? A. Now, these figures are technical matters, and it is difficult to recall just how those things piece out, and in answering specifically I want to be sure I do state it correctly.

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Mr. Devery: Suppose you give him fifteen or twenty minutes to collect his thoughts.

Commissioner Barrett: It is very near time when I am going to adjourn this hearing. I understood you wanted two days.

Mr. Nichols: We are just starting in to prove these traffic facts. But when the statement is made that our people agree with the deductions of the witness, I want to know what they are.

Commissioner Barrett: Will you be in a position at the next hearing to go ahead on that particular point? Have you anything else?

Mr. Devery: I think not.

Mr. Nichols: No, that is all.

New York City, March 31, 1921.

Met pursuant to adjournment in the Hearing Room, Public Service Commission, 1st District, No. 49 Lafayette Street, New York City, at 2:30 P. M.

Before—Hon. Alfred M. Barrett, Commissioner, Public Service Commission, 1st District.

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Appearances: Terence Farley, Esq., Counsel for the Public Service Commission, 1st District, and H. M. Chamberlain, Esq., Assistant Counsel. John P. O'Brien, Esq., Corporation Counsel for the City of New York, by Mr. Devery, Assistant Corporation Counsel. J. O. Nichols, Esq., Counsel for the Manhattan Railway Company, Arthur G. Peacock, Esq., Counsel for the Interborough Rapid Transit Company. E. W. Forrest, Esq., Secretary of the 42nd Street Property Owners & Merchants Association.

Mr. Devery: Mr. Bauer has recalled the details of that letter, and wants to tell us about them. 5559

JOHN BAUER, appearing as a witness in behalf of the applicant, having been previously sworn in this proceeding, further testified as follows:

Redirect examination by Mr. Devery:

Q. Mr. Bauer, will you explain the conversation that you had with Mr. Bruce at the Interborough office recently with regard to the difference between the sales of tickets at the Grand Central station and the number of passengers that went through that station? A. Yes. This had to do

5560 with a statement in President Skitt's letter of May 10, 1920. In this letter there was given, first figures of annual ticket sales at Grand Central on the spur for a series of years. For 1919 the number was 1,681,817, and then followed this letter:

"In addition to the number of passengers paying fare at the Grand Central station of the 42nd Street spur during the year 1919, as above shown, there should be added the additional passengers using the eastbound trains who dropped tickets in the cancelling box, which is found to be 15 per
5561 cent. of the number of tickets sold at Grand Central station, according to the actual counts made on April 16th and 13th, 1920."

Now, I tried to make clear just exactly what the statement meant. I tried to get an explanation from Mr. Bruce in the Interborough's office—of course, mind you, I am not pretending now to quote accurately, but this is, in substance, what took place. My understanding of President Skitt's statement was that, on the day of the traffic counts, in addition to the number of passengers who paid the fare at the Grand Central station on entering
5562 the spur, a further number equal to 15 per cent. of tickets sold at the Grand Central did not pay there, but, instead, deposited tickets which had been purchased previously, either at the Grand Central or elsewhere. According to this view, the total eastbound traffic on the spur on the days of the count was the number of passengers paying their fare at the Grand Central station plus 15 per cent. of the number of tickets sold at the Grand Central. This understanding of the statement was confirmed by Mr. Bruce as probably correct, although apparently he was only trying to make the best possible guess, as I was. Then, on the basis of

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this explanation, I stated that the additional tickets sold to but not then used by the passengers paying their fare on the days of the count, would on the average about equal the number of tickets deposited by passengers who did not pay their fare directly on entering the spur. Again this view was approved by Mr. Bruce as probably correct, and if this view is to be taken as approximately correct, then the conclusion that was stated would be erroneous; but apparently, from statements that had been furnished here yesterday, or since this conversation took place, this whole understanding was wrong, and according to the figures of counts that were taken on the special days—the few days brought out—there seemed to be the belief that the total number of passengers who entered the spur were 15 per cent. in excess of the number of tickets sold.

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Mr. Devery: That is all.

Recross examination by Mr. Nichols:

Q. Mr. Bauer, yesterday, on your direct you stated that, in the discussion of this fact, the 15 per cent. more passengers entering the station then purchased tickets, that you presented a view, as you call it, in respect to that fact which differed from that of the Manhattan people, and that Bruce accepted your view. Now, is that it; is it not correct? A. Now, Mr. Commissioner, if I may, off the record—

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Commissioner Barrett: Yes.

(The further statement of the witness was not reported by the stenographer.)

By Commissioner Barrett:

Q. Answer the question yes or no. A. That question cannot be answered yes or no.

5566 *Claimants' Exhibits.*

By Mr. Nichols:

Q. Did you have a different view? If so, what was it? A. No, I did not have a different view.

Mr. Nichols: That is all.

* * * * * * *

New York City, April 8, 1921.

Met pursuant to adjournment in the Hearing Room, Public Service Commission, 1st District, No. 49 Lafayette Street, New York City, at 2:30 o'clock
5567 P. M.

Before: Hon. Alfred M. Barrett, Commissioner, Public Service Commission, 1st District.

Appearances: Terence Farley, Esq., Counsel, Public Service Commission, 1st District. H. M. Chamberlain, Esq., Assistant Counsel. John P. O'Brien, Esq., Corporation Counsel for the City of New York, By Mr. Devery, Assistant Corporation Counsel. J. O. Nichols, Esq., and Arthur G. Peacock, Esq., Counsel for the Interborough Rapid Transit Company.

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JOHN BAUER, a witness appearing in behalf of the petitioner, being first duly sworn, further testified as follows:

Redirect examination by Mr. Devery:

Q. Mr. Bauer, at some previous hearing you testified as to the relative cost of maintaining this spur? You testified as to the cost; you made certain estimates? A. Yes, sir.

Q. That was, wherever you testified, as to the profit or loss resulting from the operation? A. Yes, I made certain computations.

Q. And that was based to some extent on the

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tabulation made by the Borough President showing the distance travelled by the passenger on the 3rd Avenue line and on the spur? A. Yes, sir.

Q. And on the basis of that proportion the nickel was apportioned and you used that proportion in your estimate? A. The proportion I used was based on the result.

Q. What was the actual proportion of the nickel? It was 97½ and 2½? A. In one of my computations I apportioned 97 per cent. of the nickel to the 3rd Avenue and 3 per cent. to the spur, but if I remember correctly—

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Q. The actual average was—? A. The actual average was a little less than that—was about 2½ per cent. to the spur and 97½ per cent.—

Q. That is what I say. Now, you examined these tabulations made from Mr. Nichols' count of the passengers? A. Yes, hurriedly.

Q. You find that they are practically as made by the Borough President? A. Yes.

Q. As to the proportion of the nickel which should be attributed to the 3rd Avenue line and the proportion to the spur? A. That isn't a great discrepancy. I find that on the average, for the

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two computations that were put in, based on Mr. Nichols' figures, that 96 per cent. of the nickel would go to the 3rd Avenue and about 4 per cent. to the spur, whereas I used in the first part of my computation 3 per cent. for the spur and 97 per cent. for the 3rd Avenue. I should say that is a slight relative discrepancy, particularly when in my second computation I allocated 10 per cent. of the nickel to the spur, so I think I certainly more than allowed—

Q. On the basis of 10 per cent. allocated to the

5572 spur, you found that they were operating at a loss of something like $26,000? A. That is correct.

Q. Now, Mr. Bauer, you made some further tabulations of the tickets sold from the various stations at 42nd Street to the spur, the 6th Avenue L, the 3rd Avenue L, the 2nd Avenue L, Grand Central subway, the Times Square Subway of the I. R. T. and the Times Square subway of the B. R. T.? A. I have.

Q. Have you made those tabulations for the years 1900 to 1920, inclusive? A. Correct.

5573 Q. Except in the case of the Lexington Avenue subway and the Times Square subway stations?

Commissioner Barrett: Are you going to ask an adjournment of this case?

Mr. Nichols: You have got some more testimony?

Mr. Devery: I have got a little more.

Commissioner Barrett: I mean to say, are you both ready to close the case today?

Mr. Nichols: Except that little question of cost of operation. I think under the circumstances I had better put in some little evidence.

5574 Commissioner Barrett: When we adjourn it, to what date would you like to adjourn? We are making up our calendar now.

(Discussion off the record.)

By Mr. Devery:

Q. Have you tabulated that account of schedules made? You got these figures from the record of the Public Service Commission? A. In part from the records of the Public Service Commission and in part from the Interborough Rapid Transit Company. That is for the earlier years.

Q. Do they show fiscal years? A. Fiscal years.

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Q. Is this a copy of the tabulation that you made? A. Yes, sir.

Mr. Devery: I offer that in evidence.

(Paper received in evidence and marked Exhibit No. 4 of this date.)

Q. According to this tabulation, the ticket sales on the Grand Central spur in 1900 were 1,413,052; in 1920, 1,525,427? A. That is right.

Q. On the 6th Avenue line, the ticket sales in 1900 were 3,137,827; and in 1920 they had increased to 6,361,480? A. That is right.

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Q. On the 3rd Avenue line, 1900, the ticket sales were 1,244,178; and in 1920 they had increased to 3,339,140? A. Yes.

Q. On the 2nd Avenue line the ticket sales were 486,916, increasing in 1920 to, 1,904,200? A. Yes, sir.

Q. Grand Central subway station was built in 1905, was it? A. Yes, sir; in October—during that fiscal year.

Q. There was sold in 1905, 5,121,966 tickets and in 1920 it had increased to 28,030,334 tickets? A. Yes, sir.

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Q. The I. R. T. subway, the ticket sales at Times Square in 1905 were 3,641,345; and in 1920 26,631,180? A. Yes, sir.

Q. Now, the Times Square, B. R. T. subway, which opened in 1918, the ticket sales in 1918 were 2,258,713 and in 1920 12,318,014? Now, have you made comparisons by five year periods of the relative number of tickets sold at all of these stations? A. I have.

Q. Give us the comparisons that you have made? A. I found that on all of the stations at 42nd Street, comprehended in this total, in 1900 there were sold

5578 1,868,921 tickets, whereas on the Grand Central elevated spur there were 1,413,052.

Q. What percentage of that did the spur constitute of the sales of tickets? 1,413,052, what percentage of the total did that constitute? A. The spur had for that year 29 per cent. of the traffic of those other stations.

Q. Now, in 1905? A. In 1905 the sales on the other stations had increased to 15,350,822, or 216 per cent.; whereas, on the elevated spur there were 1,581,802 or an increase of 12 per cent. In 1910,
5579 on the other stations, the total sales had advanced to 32,397,166, or 11 per cent. during that 5-year period; on the spur, the number declined to 1,214,-089, or a decrease of 23 per cent. during the five years. During the next five years, the other stations increased to 41,795,014, or 29 per cent. for the five years; the spur increased during that five-year period 11 per cent. Up to 1920, the other stations increased to 78,644,637.

Q. 78,644,637? A. Yes, or 89 per cent. for the five years. The spur increased to 1,525,427, or 13 per cent. Now, taking the whole period from 1900 to 1920, inclusive, the sales on all of the spur sta-
5580 tions increased from 4,868,921 to 76,644,367, or 1,515 per cent. On the spur, the sales increased from 1,413,052 to 1,525,427, or 8 per cent. On all of the other stations included in the vicinity of 42nd Street the increase was 1,515 per cent., compared with 8 per cent. increase on the spur.

Q. That is the difference between 1900 and 1920? A. Correct, in terms of percentages. The spur traffic was 29 per cent. in 1900 compared with the other stations; that percentage decreased to 10 in 1905, 4 in 1910, 3 in 1915 and 2 per cent. in 1920.

Q. That is, in 1920 the spur was only carrying

only 2 per cent. of all the passengers carried from 42nd Street on all of the lines? A. Yes, sir. 5581

Q. In 1920 they were carrying 20 per cent. of all the traffic? A. Yes, that is 29 per cent. compared with all the traffic on those other stations?

Q. Well, now, Mr. Bauer, Mr. Reeves testified the other day that the corner had been turned; in other words, that the traffic on the spur, after having declined since the operation of the Lexington Avenue subway, was now on the upward trend. He based that on the last six months of 1920. Now, you made some further investigation 5582
to find out whether that increase has been continued? A. Yes, sir; I have.

Q. What have you found? A. I find that for January, 1920, there was an increase—there was a further increase over January, 1919, to 2,180, but then in February, 1921, there was a decrease, compared with 1920, amounting to 16,900, and in March, 1921, there was a decrease, compared with March, 1920, amounting to 9,780. Taking then the entire fiscal year, up to March 31, 1921, there was a decrease this year amounting to 12,847, corresponding with the same period for the preceding 5583
fiscal year.

Q. So it does not look as though the corner has been turned? A. Apparently not.

Mr. Devery: I think that is all, Mr. Bauer.

Recross examination by Mr. Nichols:

Q. Do you expect to find in March, 1920, a favorable comparison with March, 1919, Mr. Bauer? A. I was not looking for expectations. I got the figures.

Q. Well, you were not looking for expectations. Are you familiar with the comparisons between

5584 the establishment of the subway and elevated lines, between March, 1919, and 1920? Have you familiarized yourself with that in a general way, or made any study that would enable you to know anything peculiar about that comparison? A. No, I made just these comparisons.

Q. And you were not looking for anything. Now, did anybody ever call your attention, as a traffic expert or statistician, to the traffic on the surface lines in March, 1919, as affecting the whole situation in the city of New York very seriously? A.
5585 I do not believe that the March figures for any operation have been made public. I got these figures only by going to the office of the Interborough Rapid Transit.

Q. Well, we have the figures of the surface travel there too, did we not? A. No, sir.

Q. Don't you know that on the 4th of February, 1919, there occurred the first of a series of extraordinary storms, marking the most inclement weather that we have had in more than a generation? A. We are not talking about February, 1919.

Q. Comparing that with February, 1920, are you not? A. I was not, no, sir.

5586 Q. What? A. No, sir.

Q. Oh, February, 1920 and February, 1921. I mean February, 1920, that is right. But whatever it was, it was the first of the two years that you compared. Now, you remember that cold winter, don't you? A. I remember that some time back there was some cold winter. I don't know which one you mean.

Q. Don't you know that the street car lines of New York City were absolutely tied up, and not moving, and that the traffic from the street surface railways in the month of February went to the

elevated and subway lines and caused a large and abnormal increase—very striking? A. In what particular?

Q. That was in 1920, last year? A. Yes, I have, generally speaking, such a remembrance.

Q. Don't you know that throughout that month and for the month of March, it was out of all normal basis of comparison—the traffic for those two months? A. I don't think so for the spur. Of course, I admit, I have made no detail study.

Q. Now, don't you know that the traffic statistics for the elevated and subway lines, for this year 5588
1921, in the month of March, for instance, show a very striking and extraordinary falling off? A. Now, Mr. Nichols, if you want me to enter into an argument, with possibilities and probabilities, I have got to do it.

Q. This is not a question of probability or possibility. It is a question of fact? A. I presented all of the facts that were definitely available.

Q. The fact is, to anybody who knows anything about the transportation of this city, the comparison that involves the month of March and the month of February in 1920—those are the par- 5589
ticular months the surface roads were practically out of business, and that that traffic was thrown onto the elevated and onto the subway, causing a very abnormal condition. Don't you know that?

Mr. Devery: Which month?

Mr. Nichols: Beginning in February and extending well into and practically through March, the surface lines were put out of business.

Mr. Devery: You were out of business for about two weeks.

Mr. Nichols: Well, it took them some time to recover from that. That was a very serious series of storms.

5590 A. If you wish, I will say this: that during the second half of the last fiscal year ended June 30, 1920, there was an extensive traffic development all over the city, and the high records for that fiscal year were due to a large extent to the great development of that six months. Now, considering in view of that fact, I should expect that for the rest of this year the spur traffic would show a decrease, compared with the corresponding months of last year, though of course that is problematical. That is my expectation, on the basis of my general
5591 knowledge of traffic development in the city.

Q. Then you think that the whole year of 1920 was an abnormal year, not merely these months of storm? A. Well, the fiscal year 1920 marked a very rapid traffic development.

Q. Do you consider the year 1920 abnormal or otherwise? A. Abnormal, especially in the second six months. Consequently that would indicate that the last six months of this year would probably not come up to the last six months of a year ago; but that is all theory. The facts I have stated.

Q. Then to compare the traffic of a year ago
5592 which was an abnormal year, due to unusual business prosperity or something of that kind, you would not expect the traffic decrease would necessarily show anything fundamental, would you? A. Well, all I am presenting here is to show figures that are to the contrary of your positive claims that the corner, so to speak, has been turned.

Q. Mr. Reeves was pretty careful to state that he was not at all sure that the corner was turned. I think you will recall he said—he indicates we have got down and are at the bottom. At any rate, the effect of the competition of the Lexington Avenue subway had evidently pretty completely,

if not entirely, ran its course, and he did not definitely state he was sure whether or not he had turned the corner? A. I think the record would show you got him to admit it looks like as if the corner had been turned.

Q. It does, and the picking out of one month like March, and comparing it with the year before, when storms on the surface lines forced the surface traffic to the elevated lines, that shows just that month and the next month, too, and March, these decreases would be expected by anybody at all familiar at all with the situation, and the Commissioner undoubtedly observed that in his comparisons. 5594

Mr. Devery: The Commission will also, I think, take the fiscal year up to the end of March and compare that with the fiscal year for the previous year, and will find that there was a decrease of 12,000. We are taking the fiscal year as a whole, so far as we can get it. If the decrease in February and March were abnormal, so may have been the increase which my friend refers to in November and December. We simply gave the figures as they were, that is all. 5595

The Witness: Mr. Devery, may I simply state that I don't wish to argue about these figures; that there is a continuous decrease; all of these are merely presented to make it clear that there is no merit in the claim or in the suggestion made to the Commission that the corner had been turned.

Q. Now, on that point, when the first subway was built, the traffic was cut in two, was it not? A. Yes, sir.

Q. About 2,000,000 to 1,000,000. Now, when the second subway was built, the Lexington Avenue, which runs parallel with the 3d Avenue, there was

5596 a drop from 1,800,000 odd to 1,400,000. That came in about two years, did it not, 1918 to 1920? A. Yes.

Q. Nothing like the decrease following the completion of the first subway, but a relative decrease as far as it went for those two years. Now, for the last fifteen months and these two abnormal months, with the decrease as compared with the two abnormal months of the year before, when the traffic of the surface lines was thrown up onto the elevated? At any rate the decrease has in-

5597 creased, and the decrease for those months has now become negligible; but there was an increase in January, was there not? A. A small one.

Q. An increase in December? A. I don't know that there was.

Q. Did I give you the figures for the last six months? A. No, you have them for the six months. Nobody has presented the figures by month.

Q. Have you looked into the figures by months? A. I have not. It was your original assertion that the corner had been turned. There is nothing to your assertion, beyond what I stated; there isn't

5598 any argument in it. There is no evidence that the corner has been turned. That is all there is to this. It may be the corner will be turned during the next six months. I shouldn't be surprised if it would, but it may be.

Q. You came in here this afternoon and gave separate months, two months which were bad months, as I pointed out? A. Wait a minute. You don't know what effect the storm had on the spur traffic in those months of 1920?

Q. Well, if we find that the traffic on every elevated station on the 3d Avenue line in those particular months took an extraordinary jump in

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1920— A. You don't know that as compared with the subsequent months, February and March, 1920. My point is that the two first months of 1920 was a period of extraordinary traffic development. I would like to have you produce figures by months and you will discover that extraordinary traffic of February and March continued to be extraordinary through April, May and June. Of course, this is a general assertion, without figures.

Q. Why didn't you look up the figures by months themselves? A. Because I did not have—there was not motive enough. All that was necessary was to 5600
present what I have to say that you were talking about, compared with your corner having been turned, and there seemed to be considerable atmosphere around here that the corner might have been turned. Now, that atmosphere I want to help to dispel, and I think we have done that.

Q. They say one swallow does not make a summer. Two months out of 15, does that seem very much to you? A. Yes, and if you go back over the history of the spur, you will find out also that even six months does not constitute a corner.

Q. I don't claim that it does. A. Then your 5601
claim that you tried to present before the Commission had no merit.

Q. Well, the claim will have to rest on its merits, such as it is; but it is a very striking thing that after this extraordinary competition from the paralleling Lexington Avenue subway, the decrease that has occurred has been limited to so comparatively short a period, and is so small as compared to the decrease after the first subway was built, and that apparently we have reached the bottom. After the effective resistance of the first subway was over, then there came the in-

5602 crease up again? A. You are misrepresenting, Mr. Nichols. I want the record clear on the figures and I have the figures here.

Commissioner Barrett: Explain it afterwards. Go ahead.

Mr. Nichols: It is my turn?

Commissioner Barrett: Yes.

Q. I say after the proposition of the first subway, there was quite a long time before this much heavier decrease began to be taken up; then it was taken up; then comes along the second subway.

5603 Now, it recovered from the first. Then is it not reasonable to expect, in view of the traffic conditions that are there, and the increase in 20 years on 42nd Street of these stations of 1500 per cent., that we cannot expect, with no competition in sight at that point, that in the next eight years there is going to be a very sharp trend up past that corner? That is what I am contending for? A. Oh, it may turn.

Q. Now, have I misrepresented that statement in any way? A. Sure.

Q. What is it? A. The whole thing is misrepre-

5604 sentation.

Q. Call it argument, if you choose.

Commissioner Barrett: If you people get up this way, we will never get through.

Mr. Nichols: Exactly. Call this the summing up now, Mr. Commissioner.

The Witness: Now, Mr. Commissioner, after the opening of the original subway in the fall of 1904, the bottom was reached on the spur in two years. I have got to stand up on this.

Commissioner Barrett: Go ahead.

The Witness: Now, it has been two years now since the Lexington Avenue subway was opened,

in 1918. So far as comparing those two events are concerned, if you took into consideration the experience up to 1904, that possibly the trend—the bottom has been reached on the spur; that the traffic probably will not decline very much lower. Now, however, go back to the earlier period and you will find that after bottom is reached, there was the next year a slight change, then a drop; then a gain, just a little gain, and then a drop, and it was over—well it was about 9 years after the bottom was reached before there was any real increase on the spur. Now, arguing by analogy, if the spur now has reached bottom, it will be nine years before it will really begin to increase. There may be some few thousand—20,000 increase in one year, and a drop of a few thousand the next year, but before there will be any real increase, it will be nine years, but even then, when in the prior period there was a real increase, it followed only after the third tracking of the 3d Avenue L, putting express service in there. If you take that into consideration, you cannot reasonably expect any considerable increase in traffic again on the spur, until some such striking improvement is made in the service on the 3d Avenue L, that will draw people on the spur.

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Commissioner Barrett: Are you all in?

Mr. Devery: All in.

* * * * * * *

5608 **Stipulation as to Claimants' Exhibit "Z."**

New York Supreme Court, First Judicial District, New York County.

[SAME TITLE]

In lieu of printing Claimants' Exhibit "Z," It Is Hereby Stipulated and Agreed by and between the parties hereto, for the sole purpose of these appeals, that Claimants' Exhibit "BB" is an abstract and condensation of Claimants' Exhibit "Z" which contains in detail the items from which the summary figures set forth in Claimants' Exhibit
5609 "BB" are compiled, and that said Claimants' Exhibit "Z" is considered a part of the record on appeal herein and may be used and referred to on these appeals by any party hereto with the same force and effect as if it were physically printed in the record on appeal herein.

It Is Further Stipulated and Agreed by and between the parties hereto, for the sole purpose of these appeals, that in case of appeal by any party hereto to the Court of Appeals from the order of the Appellate Division to be made and entered herein on these appeals the said Claimants' Exhibit "Z" is to be considered a part of the record
5610 on appeal to be used in the Court of Appeals and may be used and referred to in that Court by any party hereto with the same force and effect as if the aforesaid Claimants' Exhibit "Z" were physically printed in the record on appeal to be used in the Court of Appeals.

Dated, New York, October 11, 1928.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company.

Stipulation as to Claimants' Exhibit Z. 5611

George Welwood Murray, Attorney for The Equitable Trust Company of New York.

Page and Page, Attorneys for the Bowman Biltmore Hotels Corporation (Hotel Commodore) *et al.*

Edmund W. Van Voorhis, Attorney for the Pershing Square Building Corporation.

Alex S. Lyman, Attorney for The New York Central Railroad Company, the New York & Harlem Railroad Company and the New York State Realty and Terminal Company.

Hollander and Bernheimer, Attorneys for 5612
Seward W. Ehrich, Inc.

Shearman and Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

Midldebrook and Sincerbeaux, Attorneys for the Manhattan Storage and Warehouse Company.

Parsons, Closson and McIlvaine, Attorneys for the Cooper Union for the Advancement of Science and Art.

George P. Nicholson, Corporation Counsel, Attorney for The City of New York.

5613

Davies, Auerbach and Cornell, Attorneys for The Central Union Trust Company of New York.

5614 *Claimants' Exhibits.*

Claimants' Exhibit "BB"—Cost of Station Reconstruction, Etc.

Cost of Station Reconstruction, Structure changes and Miscellaneous work necessitated on account of the removal of the East Forty Second Street Structure.

		Cost of Labor	Cost of Material	Rent
Engineering	Chief Engr. Dept.	$4585.94		
"	F.W.G.	3073.09		923.32
Street Repair	F.McG.	590.03	462.56	
Road Engineer	D.C.W.	14073.27	14981.62	
Master Painter	J.H.P.	900.94	330.68	
" Carpenter—Man.	H.P.	10347.51	7488.37	
Telephone & Telegraph Engr.	W.H.K.	2860.25	1309.65	
Road Master	D.J.S.	1465.82	623.71	
5615 Foundations & Catch Basins..	W.C.M.	2461.26	758.28	
Track Signals	J.M.W.	42.56		
Train Operation	J.S.D.	93.39	7.67	
	Genl.	39.10	118.58	
3rd Rail & Track Cables	E.E.—Davis	10.26	1.23	
Master Carpenter—Sub.	F.W.A.		124.27	
Auto Trucks	Geis		67.43	
	Cables		832.68	
	Totals	$40453.42	27106.75	923.32

	$40453.42
	27106.75
	923.32
	$68573.49
Less Credits	467.07
	68106.42
5616 Plus Workmen's Compensation—6% on Cost of Labor—$40453.42	2432.61
	70539.03
Plus Engineering, Superintendence, Administration, Legal and all other expense not specifically allocated to this work—10%	6810.64
Total Cost	$77349.67

Construction Cost of Duct Lines, including Workmen's Compensation 6% and overhead 10%	$12503.04	
Cost of installing cables and new duct line, including Workmen's Compensation 6% and Overhead 10%	2104.06	14607.10
Construction of Stairway, N. E. Corner 42nd Street & Third Avenue. Part cost of construction directly charged to 42nd Street Spur removal plus Workmen's Compensation 6% and Overhead 10%		2838.62
		$94795.39

Claimants' Exhibit "CC"—Statement Showing Passenger Traffic by Months, 1921-1925, 42nd St. Sta., 3rd Ave. Line, Grand Central Sta. 3rd Ave. Line.

STATEMENT SHOWING PASSENGER TRAFFIC BY MONTHS

	42nd St. Station 3rd Ave. Line	Grand Central Station 3rd Ave. Line	Total	2nd Ave. Line
July 1921	273300	106720	380020	154500
Aug. "	277600	112320	389920	158310
Sept. "	288600	112360	400960	158240
Oct. "	309800	110900	420700	168580
Nov. "	286900	100720	387620	163780
Dec. "	300800	110040	410840	170360
Jan. 1922	288800	103960	392760	165800
Feb. "	262300	93620	355920	152900
Mch. "	293000	110920	403920	175560
Apr. "	293300	108440	401740	168720
May "	296300	111220	407520	176100
June "	271000	108880	379880	165160
Total	3441700	1290100	4731800	1978040
July 1922	277400	108100	385500	163000
Aug. "	284410	112040	396450	166800
Sept. "	296790	112760	409550	167120
Oct. "	319600	111740	431340	179360
Nov. "	299900	102160	402060	174260
Dec. "	303000	108340	411340	176120
Jan. 1923	297800	110360	408160	175940
Feb. "	262900	97200	360100	156600
Mch. "	310100	117920	428020	184900
Apl. "	328213	124003	452216	190057
May "	355546	127803	483349	211607
June "	348221	125957	474181	201560
Total	3683883	1358383	5042266	2147324

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5620 *Claimants' Exhibits.*

July 1923	322741	121417	444158	193688
Aug. "	331716	124055	455771	192744
Sept. "	339557	123433	462990	185056
Oct. "	376827	135594	512421	214468
Nov. "	352066	123442	475508	203876
Dec. "	431198	25243	456441	210780
Jan. 1924	428517		428517	210210
Feb. "	384811		384811	192815
Mar. "	431585		431585	215420
Apr. "	428277		428277	211676
May "	444113		444113	220144
June "	432437		432437	215953
5621 Total	4703845	653184	5357029	2466830
July 1924	425331		425331	220728
Aug. "	414960		414960	210153
Sept. "	429271		429271	214534
Oct. "	468848		468848	236441
Nov. "	417549		417549	216848
Dec. "	434882		434882	227263
Jan. 1925	431692		431692	229343
Feb. "	398165		398165	205103
Mch. "	464513		464513	227777
Apr. "	468995		468995	227212
May "	474748		474748	227151
June "	457179		457179	219733
5622 Total	5286133		5286133	2662286

Claimants' Exhibit "DD"—Statement Showing Passenger Traffic by Months, 1921-1925, 34th St. Sta., 3rd Ave. and 2nd Ave. Lines, 47th St. Sta., 3rd Ave. Line, 50th St. Sta., 2nd Ave. Line.

STATEMENT SHOWING PASSENGER TRAFFIC BY MONTHS

Month	34th St. Sta. 3rd Ave. Line	34th St. Sta. 2nd Ave. Line	47th St. Sta. 3rd Ave. Line	50th St. Sta. 2nd Ave. Line
July 1921	263,560	130,070	102,237	70,786
Aug.	269,100	134,435	103,436	72,351
Sept.	277,000	135,690	109,894	76,101
Oct.	303,740	148,010	122,523	83,023
Nov.	294,160	144,200	122,834	82,732
Dec.	309,920	147,580	123,279	86,838
Jan. 1922	292,080	142,840	118,939	82,742
Feb.	271,300	135,405	106,582	74,802
Mch.	313,680	156,650	124,186	84,501
Apr.	295,920	149,400	117,894	82,294
May	295,820	150,890	119,027	84,311
June	273,080	140,520	108,072	78,045
Total	3,459,360	1,517,690	1,378,903	958,526
July 1922	251,000	136,440	107,068	77,335
Aug.	268,200	140,420	110,680	76,593
Sept.	282,920	143,788	118,925	79,414
Oct.	307,880	155,570	137,187	89,759
Nov.	298,900	153,300	132,145	87,194
Dec.	305,160	153,280	132,585	88,325
Jan. 1923	301,880	157,640	140,790	90,175
Feb.	269,960	141,070	124,761	82,402
Mch.	330,020	169,500	139,388	96,880
Apr.	333,017	162,888	132,838	91,877
May	344,684	173,444	140,323	100,468
June	317,741	160,291	172,731	95,646
Total	3,611,362	1,847,631	1,589,421	1,056,068

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	July 1923	285,141	151,658	112,489	83,633
	Aug.	298,920	156,011	113,457	83,514
	Sept.	300,608	150,871	118,730	82,990
	Oct.	365,359	179,291	149,633	95,436
	Nov.	336,215	166,395	138,076	90,160
	Dec.	352,025	166,776	141,329	92,385
	Jan. 1921	334,202	169,088	134,460	91,832
	Feb.	308,436	161,738	124,383	84,740
	Mch.	340,304	178,738	136,947	94,680
	Apr.	339,513	172,960	139,610	93,350
	May	334,936	172,457	141,782	97,260
	June	311,594	168,280	128,635	94,690
5627	Total	3,907,253	1,994,263	1,579,531	1,084,670
	July 1924	287,864	165,549	124,042	91,020
	Aug.	284,095	159,673	118,528	89,210
	Sept.	313,030	171,896	131,795	95,780
	Oct.	349,216	191,534	154,288	104,275
	Nov.	309,913	169,986	136,136	96,627
	Dec.	334,742	174,994	135,666	99,730
	Jan. 1925	326,105	182,022	141,187	106,769
	Feb.	320,253	168,005	121,187	91,052
	Mch.	340,721	189,776	136,071	100,852
	Apr.	334,381	183,526	131,241	98,387
	May	319,372	179,977	128,551	99,224
	June	305,268	171,891	119,642	94,229
5628	Total	3,806,960	2,108,829	1,578,334	1,167,155

Stipulation as to Certain Acts of the Legislature, being City's Exhibits 6, 7 and 8 and Claimants' Exhibits "A," "B," "C" and "Q." 5629

New York Supreme Court, First Judicial District, County of New York.

[Same title]

It is hereby stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that Chapter 788 of the Laws of 1917 (City's Exhibit 6), Chapter 611 of the Laws of 1919 (City's Exhibit 7), Chapter 635 of the Laws 5630
of 1923 (City's Exhibit 8), Chapter 140 of the Laws of 1850 (Claimants' Exhibit "B"), Chapter 697 of the Laws of 1866 (Claimants' Exhibits "A," "B," "C" & "Q"), Chapter 489 of the Laws 1867 (Claimants' Exhibits "A," "B," "C" & "Q") Chapter 855 of the Laws of 1868 (Claimants' Exhibits "A," "B," "C," & "Q"), Chapter 595 of the Laws of 1875 (Claimants' Exhibits "A," "B," "C," & "Q") and Chapter 606 of the Laws of 1875 (Claimants' Exhibits "A," "B," "C," and "Q") are considered a part of the record on appeal herein and may be used by and referred to on these appeals by any 5631
party hereto with the same force and effect as if the aforesaid Acts were physically printed in the record on appeal herein.

It is further stipulated and agreed by and between the parties hereto that in case of an appeal by any party hereto to the Court of Appeals from the order of the Appellate Division to be made and entered herein on these appeals that the aforesaid Acts are to be considered a part of the record on appeal to be used in the Court of Appeals and may

5632 be used and referred to in that Court by any party hereto with the same force and effect as if the aforesaid Acts were physically printed in the record on Appeal to be used in the Court of Appeals.

Dated New York August 15, 1928.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company.

5633 George Welwood Murray, Attorney for The Equitable Trust Company of New York.

Page and Page, Attorneys for the Bowman Biltmore Hotels Corporation (Hotel Commodore) *et al.*

Edmund W. Van Voorhis, attorney for the Pershing Square Building Corporation.

Alex S. Lyman, Attorney for The New York Central Railroad Company, the New York and Harlem Railroad Company and the New York State Realty and Terminal Company.

Hollander and Bernheimer, Attorneys for Seward W. Ehrich, Inc.

5634 Shearman and Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

Middlebrook and Sincerbeaux, Attorneys for the Manhattan Storage and Warehouse Company.

Parsons, Closson and McIlvaine, Attorneys for the Cooper Union for the Advancement of Science and Art.

George P. Nicholson, Corporation Counsel, Attorney for The City of New York.

Davies, Auerbach and Cornell, Attorneys for The Central Union Trust Company of New York.

5635

Claimant's (Manhattan Railway Co.) Exhibit "AA"—Sheet of Earnings.

INTERBOROUGH RAPID TRANSIT COMPANY

For Month of June 1924.

	Current Year			Previous Year			Increase—Black Decrease—Red
	Manhattan	Subway	Total	Manhattan	Subway	Total	
Gross operating revenue	1,629,259.25	3,104,881.66	4,734,140.91	1,615,037.72	2,916,195.75	4,531,233.47	202,907.44
Operating expenses	943,125.07	1,717,961.75	2,661,086.82	969,366.04	1,764,943.60	2,734,309.64	73,222.82
Expenses to earnings	57.88%	55.33%	56.21%	60.02%	60.52%	60.34%	4.13%
Net operating revenue	686,134.18	1,386,919.91	2,073,054.09	645,671.68	1,151,252.15	1,796,923.83	276,130.26
Taxes on real estate	41,942.45	15,284.81	57,227.26	39,772.18	15,903.09	55,675.27	1,551.99
Taxes on capital and earnings	16,377.19	18,370.53	34,747.72	16,268.03	19,066.21	35,334.24	586.52
Special franchise tax	102,930.78	.....	102,930.78	113,999.26	.....	113,999.26	11,068.48
Federal Capital Stock Tax	.....	608.00	608.00	.....	685.00	685.00	77.00
Federal income tax	152,200.00	161,800.00	*314,000.00	3,000.00	1,200.00	4,200.00	309,800.00
Total Taxes	313,450.42	196,063.34	509,513.76	173,039.47	36,854.30	209,893.77	299,619.99
Income from operation	372,683.76	1,190,856.57	1,563,540.33	472,632.21	1,114,397.85	1,587,030.06	23,489.73
Non-operating income	7,723.42	34,305.27	42,028.69	10,873.22	37,051.55	47,924.77	5,896.08
Gross Income	380,407.18	1,225,161.84	1,605,569.02	483,505.43	1,151,449.40	1,634,954.83	29,385.81
Interest on bonds (rental)	150,686.66	222,238.11	372,924.77	150,686.66	214,855.40	365,542.06	7,382.71
Manhattan Dividends (rental)	523,877.00	.....	523,877.00	60,000.00	.....	60,000.00	463,877.00
Manhattan Ry. Cash Rental	4,166.66	.....	4,166.66	4,166.66	.....	4,166.66	.....
Interest on 5% bonds	120,072.73	552,401.93	672,474.66	117,263.00	552,401.94	669,664.94	2,809.72
Interest on 10 yr. 7% notes	79,956.22	107,625.00	187,581.22	76,511.77	107,625.00	184,136.77	3,444.45
Sinking fund on 5% bonds	43,845.17	137,173.74	181,018.91	42,428.85	137,173.80	179,602.65	1,416.26
Interest on 10 yr. 6% notes	3,416.35	25,363.82	28,780.17	432.66	12,816.94	13,249.60	15,530.57
Interest on equip. trust ctfs.	.....	5,600.00	5,600.00	.....	389.66	389.66	5,210.34
Int. on investment of dep. reserve	.....	4,066.66	4,066.66	.....	4,066.66	4,066.66	.....
Interest on unfunded debt	1,855.45	6,362.61	8,218.06	8,852.94	6,301.08	15,154.02	6,935.96
Other rent deductions	19,138.28	2,181.20	21,319.48	19,658.17	2,181.20	21,839.37	519.89
Total Income Deductions	947,014.52	1,063,013.07	2,010,027.59	480,000.71	1,037,811.68	1,517,812.39	492,215.20
Net Corporate Income (Exclusive of accruals under Contract 3 & related ctfs.)	566,607.34	162,148.77	404,458.57	3,504.72	113,637.72	117,142.44	521,601.01
Maintenance in excess of Contractural provisions	70,806.27	62,644.00	8,162.27	86,956.33	4,079.63	82,876.70	74,714.43
Balance after actual maintenance	637,413.61	224,792.77	412,620.84	83,451.61	117,717.35	34,265.74	446,886.58
Passengers carried	30,202,188	57,740,747	87,942,935	29,878,090	53,788,082	83,666,172	4,276,763
Trains run	99,368	115,046	214,414	100,780	114,806	215,586	1,172
Train mileage	1,086,583	1,432,282	2,518,865	1,104,111	1,410,477	2,514,588	4,277
Cars run	500,724	727,032	1,227,756	505,608	722,376	1,227,984	228
Car mileage	5,647,320	10,252,600	15,899,920	5,710,682	10,088,797	15,799,479	100,441
Average passengers per train	304	502	410	296	468	388	22
Average cars per train	5.04	6.32	5.72	5.02	6.29	5.69	.03
Daily average passengers carried	1,006,740	1,924,691	2,931,431	995,936	1,792,936	2,788,872	142,559
Daily average earnings	54,309.	103,496.	157,805.	53,835.	97,206.	151,041.	6,764.
Daily average operating expenses	31,438.	57,265.	88,703.	32,312.	58,832.	91,144.	2,441.

5636

5637

5638 *Claimants' Exhibits.*

	366 Days	For 12 Months Ended June 30th, 1924.		365 Days			
Gross operating revenue	19,381,140.44	38,392,634.61	57,773,775.05	19,215,177.44	36,344,258.46	55,559,435.90	2,214,339.15
Operating expenses	11,884,781.98	21,956,633.09	33,841,415.07	12,437,370.06	21,955,138.72	34,392,508.78	**551,093.71**
Expenses to earnings	61.32%	57.20%	58.57%	64.73%	60.41%	61.90%	**3.33%**
Net operating revenue	7,496,358.46	16,436,001.52	23,932,359.98	6,777,807.38	14,389,119.74	21,166,927.12	2,765,432.86
Taxes on real estate	494,456.23	177,857.65	672,313.88	479,204.00	193,043.56	672,247.56	66.32
Taxes on capital and earnings	194,753.58	231,064.61	425,818.19	224,558.23	235,610.56	460,168.79	**34,350.60**
Special franchise tax	1,300,857.15	.....	1,300,857.15	1,475,908.44	.....	1,475,908.44	**175,051.29**
Federal Capital Stock Tax	.....	7,296.00	7,296.00	.....	8,220.00	8,220.00	**924.00**
Federal income tax	178,200.00	179,044.45	*357,244.45	31,663.49	14,102.27	45,765.76	311,478.69
Total Taxes	2,168,266.96	595,262.71	2,763,529.67	2,211,334.16	450,976.39	2,662,310.55	101,219.12
Income from operation	5,328,091.50	15,840,738.81	21,168,830.31	4,566,473.22	13,938,143.35	18,504,616.57	2,664,213.74
5639 Non-operating income	84,270.23	318,492.42	402,762.65	80,880.72	492,969.53	573,850.25	**171,087.60**
Gross Income	5,412,361.73	16,159,231.23	21,571,592.96	4,647,353.94	14,431,112.88	19,078,466.82	2,493,126.14
Interest on bonds (rental)	1,808,240.00	2,610,999.06	4,419,239.06	1,808,240.00	2,584,034.93	4,392,274.93	26,964.13
Manhattan Dividends (rental)	2,723,877.00	.....	†2,723,877.00	1,710,000.00	.....	1,710,000.00	1,013,877.00
Manhattan Ry. Cash Rental	50,000.00	.....	50,000.00	50,000.00	.....	50,000.00	.....
Interest on 5% bonds	1,438,169.21	6,628,823.15	8,066,992.36	1,403,267.18	6,628,823.16	8,032,090.34	34,902.02
Interest on 10 yr. 7% notes	954,919.96	1,291,500.00	2,246,419.96	936,680.69	1,366,395.28	2,303,075.97	**56,656.01**
Sinking fund on 5% bonds	524,471.75	1,646,084.64	2,170,556.39	496,389.76	1,639,661.55	2,136,051.31	34,505.08
Interest on 10 yr. 6% notes	18,270.67	242,637.87	260,908.54	2,545.50	62,600.13	65,145.63	195,762.91
Interest on equip. trust ctfs	.....	70,420.00	70,420.00	.....	389.66	389.66	70,030.34
Int. on investment of dep. reserve	.....	48,800.00	48,800.00	.....	48,800.00	48,800.00	.....
Interest on unfunded debt	68,726.26	109,816.89	178,543.15	105,586.61	70,314.32	175,900.93	2,642.22
Other rent deductions	238,485.27	26,174.40	264,659.67	269,293.88	27,239.03	296,532.91	**31,873.24**
Total Income Deductions	7,825,160.12	12,675,256.01	20,500,416.13	6,782,003.62	12,428,258.06	19,210,261.68	1,290,154.45
Net Corporate Income (Exclusive of accruals under Contract 3 & related							
5640 ctfs.	**2,412,798.39**	3,483,975.22	1,071,176.83	**2,134,649.68**	2,002,854.82	**131,794.86**	1,202,971.69
Maintenance in excess of Contractural provisions	1,303,487.15	124,715.49	1,430,202.64	584,820.41	**147,622.89**	437,197.52	993,005.12
Balance after actual maintenance	**3,718,285.54**	3,359,259.73	**359,025.81**	**2,719,470.09**	2,150,477.71	**568,992.38**	209,966.57
Passengers carried	359,410,056	714,933,187	1,074,343,243	348,524,700	676,650,431	1,025,175,131	49,168,112
Train mileage	13,267,366	17,340,643	30,608,009	12,356,308	16,936,544	29,292,852	1,315,157
Car mileage	68,889,734	124,025,653	192,915,387	65,041,092	120,563,946	185,605,038	7,310,349
Daily average passengers carried	981,995	1,953,369	2,935,364	954,862	1,853,837	2,808,699	126,665
Daily average earnings	52,954.	104,898.	157,852.	52,644.	99,573.	152,217.	5,635.
Daily average operating expenses	32,472.	59,991.	92,463.	34,075.	60,151.	94,226.	1,763.

NOTE: Under the plan of Readjustment of May 1st, 1922, payments of the Sinking Fund installments due from July 1st, 1921 to and including January 1st, 1926, are postponed.

* Including $310,000.—estimated U. S. Income Tax for six (6) mos. end. June 30th 1924, under the Revenue Act of 1924.

† Including reserve to cover amount of additional dividend rental which might become payable to owners of Manhattan stock not assenting to the Plan of Readjustment, for period from July 1st 1922 to June 30th 1924.

H. P. BERRY
Comptroller

NOTE: Figures in **dark** type are red in original.

Stipulation as to Central Union Trust Co.'s Exhibits "A" and "B" and Equitable Trust Co.'s Exhibit "A." 5641

New York Supreme Court, First Judicial District, New York County.

[SAME TITLE]

In lieu of printing the Central Union Trust Company's Exhibits "A" and "B" and the Equitable Trust Company's Exhibit "A," it is hereby stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that the mortgage known as the Consolidated mortgage 5642
made by the Manhattan Railway Company and the Metropolitan Elevated Railway Company to the Central Union Trust Company, as Trustee, dated February 26, 1890 and recorded in the office of the Register of the County of New York on February 26th, 1890, in Liber 2538 of Mortgages, page 157 (received in evidence and marked Central Union Trust Company's Exhibit "A" (page 1066 of the record), the Indenture supplemental to the aforesaid Consolidated mortgage made by the Manhattan Railway Company to the Central Union Trust Company, as Trustee, dated June 13, 1899 5643
and recorded in the office of the Register of the County of New York on July 12, 1899 in Block Series Liber 7 of General Mortgages, page 265 (received in evidence and marked Central Union Trust Company's Exhibit "B" (page 1067 of the record) and the second mortgage made by the Manhattan Railway Company to the Equitable Trust Company of New York, dated June 1st, 1913 and recorded in the office of the Register of the County of New York on March 2nd, 1916 in Liber 26 of General Mortgages, page 222 and also in the

Register's office of the County of Bronx on March 3rd, 1916 in Liber 1 of General Mortgages, at page 162 (received in evidence and marked Equitable Trust Company's Exhibit "A" (page 1067 of the record), being the same mortgages subject to which the award is made in the Final Decree of the Supreme Court herein (pages 30 and 31 of the record), are considered a part of the record on appeal herein and may be used and referred to on these appeals by any party hereto with the same force and effect as if the aforesaid exhibits (Central Union Trust Company's Exhibits "A" and "B" and Equitable Trust Company's Exhibit "A") were physically printed in the record on appeal herein.

It is further stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that, in the event of an appeal by any party hereto to the Court of Appeals from the order of the Appellate Division to be made and entered herein on these appeals, the aforesaid exhibits (Central Union Trust Company's Exhibits "A" and "B" and Equitable Trust Company's Exhibit "A") are to be considered a part of the record on appeal to be used in the Court of Appeals and may be used and referred to in that Court by any party hereto with the same force and effect as if the same were physically printed in the record on appeal to be used in the Court of Appeals.

Dated, New York December 11, 1928.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company.

George Welwood Murray, Attorney for The Equitable Trust Company of New York.

Page and Page, Attorneys for the Bowman Biltmore Hotels Corporation (Hotel Commodore) et al.

Edmund W. Van Voorhis, Attorney for the Pershing Square Building Corporation.

Alex S. Lyman, Attorney for The New York Central Railroad Company, the New York & Harlem Railroad Company and the New York State Realty and Terminal Company.

Hollander and Bernheimer, Attorneys for Seward W. Ehrich, Inc.

Shearman and Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, 5648
The National City Bank of New York and The National City Realty Corporation.

Middlebrook and Sincerbeaux, Attorneys for the Manhattan Storage and Warehouse Company.

Parsons, Closson and McIlvaine, Attorneys for the Cooper Union for the Advancement of Science and Art.

George P. Nicholson, Corporation Counsel, Attorney for The City of New York.

Davies, Auerbach and Cornell, Attorneys for The Central Union Trust Company of New York.

5649

5650 **Stipulation Consenting to Submission of Original Claimants' Exhibits (Photographs) "H-1" to "H-38," "H-42" to "H-46," "R," "R-1" to "R-13," "S," and "S-1" to "S-16" and City's Exhibits (Photographs) "46-A" to "46-P," 66, 67 and 68.**

New York Supreme Court, First Judicial District, County of New York.

[Same Title]

5651 It is hereby stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that any party hereto may submit to the Appellate Division of the Supreme Court of the First Judicial Department on the argument of these appeals the original Exhibits (photographs) received in evidence herein and marked Claimants' "H-1," "H-2," "H-3," "H-4," "H-5," "H-6," "H-7," "H-8," "H-9," "H-10," "H-11," "H-12," "H-13," "H-14," "H-15," "H-16," "H-17," "H-18," "H-19," "H-20," "H-21," "H-22," "H-23," "H-24," "H-25," "H-26," "H-27," "H-28," "H-29," "H-30," "H-31," "H-32," "H-33," "H-34," "H-35," "H-36,"
5652 "H-37," "H-38," "H-42," "H-43," "H-44," "H-45" and "H-46" (printed at pages 1906 and 1908 of the record), Claimants' Exhibits "R," "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12" and "R-13" (printed at page 1928 of the record) and Claimants' Exhibits "S," "S-1," "S-2," "S-3," "S-4," "S-5," "S-6," "S-7," "S-8," "S-9," "S-10," "S-11," "S-12," "S-13," "S-14," "S-15" and "S-16" (printed at page 1930 of the record), and City's Exhibits (photographs) "46-A," "46-B," "46-C," "46-D,"

"46-E," "46-F," "46-G," "46-H," "46-I," "46-J," "46-K," "46-L," "46-M," "46-N," "46-O" and "46-P" (printed at p.1892 of the record), City's Exhibit 66 (printed at p. 1896 of the record), City's Exhibit 67 (printed at p. 1898 of the record) and City's Exhibit 68 (printed at p. 1900 of the record). 5653

It is further stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that, in the event of any appeal by any party hereto to the Court of Appeals from the order of the Appellate Division to be made and entered herein on these appeals, any party 5654
hereto may submit to the Court of Appeals on the argument of the appeal or appeals in that Court the original Exhibits (photographs) received in evidence and marked Claimants' "H-1," "H-2," "H-3," "H-4," "H-5," "H-6," "H-7," "H-8," "H-9," "H-10," "H-11," "H-12," "H-13," "H-14," "H-15," "H-16," "H-17," "H-18," "H-19," "H-20," "H-21," "H-22," "H-23," "H-24," "H-25," "H-26," "H-27," "H-28," "H-29," "H-30," "H-31," "H-32," "H-33," "H-34," "H-35," "H-36," "H-37," "H-38," "H-42," "H-43," "H-44," "H-45" and "H-46" (printed at pp. 1906 and 1908 of the record), Claimants' Exhibits "R," "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12" and "R-13" (printed at p. 1928 of the record) and Claimants' Exhibits "S," "S-1," "S-2," "S-3," "S-4," "S-5," "S-6," "S-7," "S-8," "S-9," "S-10," "S-11," "S-12," "S-13," "S-14," "S-15" and "S-16" (printed at page 1930 of the record), and City's Exhibits (photographs) "46-A," "46-B," "46-C," "46-D," "46-E," "46-F," "46-G," "46-H," "46-I," "46-J," "46-K," "46-L," "46-M," "46-N," "46-O" and "46-P" (printed at page 1892 of 5655

5656 the record), City's Exhibit 66 (printed at p. 1896 of the record), City's Exhibit 67 (printed at p. 1898 of the record) and City's Exhibit 68 (printed at p. 1900 of the record).

Dated, New York, December 14, 1928.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company.

George Welwood Murray, Attorney for The
5657 Equitable Trust Company of New York.

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5658 Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

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